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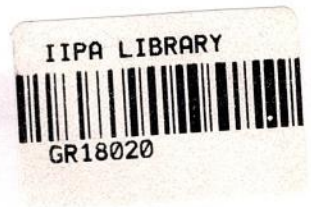
TRANSPARENCY IN PUBLIC CONTRACTS
AND ROLE OF INTEGRITY PACT

BY

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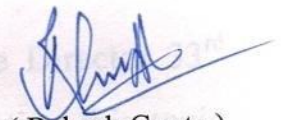
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I have the pleasure to certify that Sh. S.K. Yagnik has pursued his research work and prepared the present dissertation entitled "Transparency In Public Contracts And Role Of Integrity Pact " under my guidance and supervision . The dissertation is the result of his own research and to the best of my knowledge , no part of it has comprised any earlier monograph , dissertation or book. This is being submitted to the Indian Institute of Public Administration (IIPA) for the Master's Diploma in Public Administration (MDPA) in partial fulfillment of the requirement for the Advanced Professional Program in Public Administration (APPPA) .

I recommend that this dissertation of Sh. S.K. Yagnik is worthy of consideration for award of MDPA of IIPA



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I am also thankful to Professor Vinod Sharma , Course Director 33rd APPPA for providing me with the opportunity of selecting this topic which is extremely relevant and crucial to better governance in contemporary context. However the dissertation could not have been conceptualized without the valuable ‘on the job’ experience and guidance which I received from my seniors as well as my colleagues during my service in Railways as also in Ministry of Defence which provided me with an opportunity to be a part of the team that implemented the Integrity Pact in the Ministry of Defence during 2006-2007 .


(S.K. Yagnik)

LIST OF ABBREVIATIONS

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LIST OF ABBREVIATIONS

PREFACE

Abbreviation	Description
ANA	Air Nippon Airways
CVO	Chief Vigilance Officer
CVC	Chief Vigilance Commission
CBI	Central Bureau of Investigation
CPI	Corruption Perception Index
CBO	Congressional Budget Office
CIL	Coal India Limited
CMD	Chairman & Managing Director
CTE	Chief Technical Examiner
CTEO	Chief Technical Examiner Organization
CDI	Commissioner for Departmental Enquiries
DSPE	Delhi Special Police Establishment
DPP 2006	Defence Procurement Procedure 2006
DGS&D	Directorate General of Supply and Disposal
EADS	European Aeronautical Defence & Space Company
ED	Enforcement Directorate
EOW	Economic Offence Wing
GAIL	Gas Authority of India Limited
GOW	General Offence Wing
IP	Integrity Pact
IEM	Independent External Monitor
IPC	Indian Penal Code
LPG	Liquefied Petroleum Gas
MOD	Ministry of Defence
MOF	Ministry of Finance
NFL	National Fertilizer Limited
OMB	Office of Management & Budget
ORD	Operating Requirement Document
PSE	Public Sector Enterprise
PC Act	Prevention of Corruption Act 1988
SPE	Special Police Establishment
TI	Transparency International

PREFACE

The subject of Dissertation has been chosen as a part of 33rd APPPA course being conducted by IIPA , New Delhi from 1st July 2007 to 31st March 2008.

Corruption has been identified as one of the biggest stumbling blocks in the developing countries like India towards achieving the objective of inclusive growth for vast multitude of its underprivileged population. The vast sums of money which are earmarked for the development of the downtrodden population either in the form of direct poverty alleviation programs or meant for indirect benefit of the poor through investment in infrastructure projects and education programs end up in the hands of corrupt officials , unscrupulous contractors and even criminals due to malaise of corruption. Corruption which may be defined as 'abuse of public office for private gains ' , is an antithesis of good governance as retards economic growth , hampers equitable distribution of wealth and opportunities , encourages antisocial elements to grow . Corruption also discourages the genuine entrepreneurs from contributing to the economic well being of the country.

Corruption may pervade the entire fabric of public services in the nation. The problem can be encountered when a person goes to a police station to lodge complaint and is confronted with demand for money by the policemen . He may face demand for money for settling right the electricity bill by the corrupt electricity employee or by the Railway conductor for providing the berth. Even private

traders do not hesitate in indulging in corrupt practices. A LPG dealer would demand money to provide early gas connection which a Fair Price Shop Keeper would sell the food grain meant for Below Poverty line population in open market unscrupulously.

Such has been the reputation of our country in prevalence of corruption that many of the international houses of business that could substantially contribute to our economic development programs are not willing to bid in our tenders because of the notoriety of the country on this count. Similarly many Multi National Companies which would have liked to set up their manufacturing facilities/ service centers because of availability of cheap and trained manpower prefer to move to other countries in Asia because of red tapism coupled with corruption. The Transparency International, a Berlin based Non Government Organization has ranked India 72nd amongst a list of nations based on Corruption Perception Index, which is a poor reflection on India's efforts in finding an important place in world order.

It is not that the problem of corruption is confined to India only. In fact the grand form of corruption has been reported from some of the most advanced countries like USA and Japan. The Boeing Tanker case (USA) and Lockheed scandal which rocked Japan are grim reminders of the fact that corruption is an all pervasive phenomenon with difference in degree. However a major differentiating feature between India and the advanced countries of the world in this regard is the strong enforcement and corrective mechanism which ensures speedy disposal of cases which come to the limelight

The problem of corruption has been haunting the leadership of this country from early sixties. As a result of the efforts of the then Home Minister Lal Bahadur Shastri, Central Vigilance Commission was set up in 1964 with the objective of conducting inquiries into the charges of corruption against public servants, carrying out general checks into the working of public bodies with a view to check possibility of corruption and to tender independent and impartial advice to the disciplinary and other bodies in disciplinary cases having vigilance angle.

Another measure taken by the Government to help various bodies in conducting investigations against public servants was setting up of Delhi Special Police Establishment (DSPE) which was converted into Central Bureau of Investigation (CBI). This is a specialized investigation body which helps CVC as well as other arms of the Government in drive against corruption. The CBI and the CVC have been able to play an important role in the assigned area of control on corruption. In spite of the efforts of these organizations the malaise of corruption has not been completely checked.

Acknowledging the fact that corruption has been a major stumbling block in economic development of most of the Afro-Asian countries, Transparency International, a Berlin based organization has been working in the field of increasing transparency and reducing corruption for last several years. It has come up with a Corruption Perception Index which measures the corruption level in each country based on several objective/subjective parameters. It is also a platform to bring together various similar bodies of the world which are fighting corruption at local levels. It renders advice on newer means of

combating this problem. Transparency International came up with the suggestion of making 'Integrity Pact' a part of Procurement mechanism which in its opinion could legally bind both the parties i.e the Purchaser as well as Suppliers from entering into any unethical or corrupt practices during the course of concluding or executing a contract.

In this study we will limit our scope to Public contracts and examine as to whether the measures adopted for increased transparency, particularly the concept of 'Integrity Pact' play a role in reducing scope of corruption in Public contracts which are a major mode of expenditure with maximum potential for abuse in the course of government sponsored economic and developmental activities.

In India public bodies undertake substantive amount of purchases from private as well as international sources for various needs. The two largest purchasing agencies under central Government are the Ministry of Defence and the Ministry of Railways. Apart from them several Public Sector Agencies also undertake purchase through public tenders. Most of the purchasing departments are following procurement procedures which embark on the general policy of fair competition with the objective of getting the best price for the Government and making best use of exchequer money. Large Ministries like Ministry of Defence and Ministry of Railways have their own elaborate procurement procedures while many other Ministries follow the Guideline issued by the Ministry of Finance. All these guidelines while differing in finer details to suite the specific needs of

individual users are generally based on the Finance Ministry guidelines as well as guidelines issued by CVC.

Taking cognizance of the problems in enforcing transparency at pre as well as post contract stages Ministry of Defence adopted the pre- contract Integrity Pact in Defence Procurement Procedure 2006. This was followed by adoption of Integrity Pct by several public sector undertakings.

In this dissertation, endeavor will be to mainly examine the purpose behind the Integrity Pact , its adoption by various Departments / Ministries , the experience gained so far and its impact in curbing the corrupt practices .

CHAPTER I

ASSESSMENT OF THE PROBLEM OF CORRUPTION

Corruption has been identified as one of the biggest stumbling blocks in the developing countries like India towards achieving the objective of inclusive growth for vast multitude of its underprivileged population. In this chapter we will examine the nature of corruption in brief.

Statement of the Problem - Corruption is known to exist since pre medieval times. In treatise on Public Administration ' ArthShastra ' dating back to 4th century B.C., Kautilya mentioned that ' just as it is impossible not to taste honey(or the poison) that finds itself on the tip of the tongue, so it is impossible for a government servant not to eat up a bit of king's revenue. Just as a fish moving under the water cannot possibly be found out either as drinking or not drinking water, so the government servant employed in the government work cannot be found out taking money for themselves. '

It would also not be correct to say that the phenomenon of corruption is unique to us. Corruption in some form or the other has been reported from possibly all the countries and in almost all spheres of life . The cases have been reported from even developed countries like Japan and USA and some of these have been highlighted in the later part of the study . However the extent of corruption , relative apathy of the nation as a whole and incidences of petty corruption make the problem more acute for our country particularly when almost 30 percent of our population is reeling under abject poverty .

Corruption erodes the capacity of the Government to provide basic amenities of life to its population and eats away the vital resources deployed for welfare of the nation and its development. Prevalence of corruption leads to use of public authority for creation of private wealth and that too at the cost of the deserving beneficiaries. Corruption is also anti national. Many of the criminals and terrorist organizations have used corruption to ward off law enforcing agencies and spread their regime of terror and violence challenging the very existence of the nation at times. Corruption distorts the decision making ability of the government organizations, which is twisted in favour of non deserving entities for personnel gains. It seriously impacts the image of the nation in the international arena and makes the common citizen of the country cast serious doubts about the efficacy of democratic and institutional set up of the country which strikes at the very root of the nationhood.

A 2004 world bank study of the ramifications of corruption for service delivery concludes that an improvement of one standard deviation in the International Country Risk guide corruption index leads to a decrease in 29 percent decrease in infant mortality rate , a 53 percent increase in satisfaction amongst recipients of public health care and 30-60 percent increase in satisfaction stemming from improved road conditions(*Tailoring the fight against Corruption to country Circumstances – Anwar Shah*) . Studies also show that corruption slows growth , impairs capital accumulation, reduces the effectiveness of the development and increases income inequality and poverty(Gupta, Davoodi and Alonso –Terne 1998)

Corruption may also affect macroeconomic stability when for example the allocation of debt guarantees based on fraud in financial institutions leads to loss of confidence by investors and foreign exchange markets. For example, Bank of Credit and Commerce International (BCCI) scandal uncovered in 1991 led to financial ruin of global pension system. The corrupt practices in Mehran Bank in Sindh province of Pakistan in mid 1990s led to a loss of credibility for the national banking system of Pakistan.

Corruption is not manifested in one single form. It typically takes the following broad forms-

- Petty, administration or bureaucratic corruption – Many corrupt practices are isolated transactions by individual public officials who abuse their office by demanding bribes and kickbacks, diverting public funds or awarding favors in return for personal considerations. Such forms of corruption are also referred to as petty corruption although in real terms a substantial amount of public resource may be involved.
- (a) Grand Corruption- Misuse of vast amounts of public resources by state officials – usually members of, or people associated with political or administrative elite constitutes grand corruption.
- (b) State or regulatory capture and influence peddling- State capture is collusion by private actors with public officials or politicians for their mutual private gains. In this form of corruption, the private sector 'captures' the state legislative, executive and judicial apparatus for its own purpose. State capture coexists with the conventional (and opposite) view

of the corruption in which public officials extort or otherwise exploit private sector for private ends.

(c) Patronage , paternalism , clientelism - Corruption occurs when officials use their official position to provide assistance to clients or colleagues with the same geographic, cultural or ethnic background so that they can receive preferential treatment in dealing with the public sector.

The factors that cause corruption are country specific . However it would be adequate to understand that approaches that oversimplify the problem by adopting common measurement tools and common correction policies and tools to all the states without understanding the origin of corruption are likely to fail. It would be fair to conclude the chapter with the remark that corruption is a symptom of failed governance and history has proven time and again that failed governance leads to failed state which is a nightmare for the world at large.

CHAPTER II

SOME CASES OF CORRUPTION IN INDIA AND ABROAD

Here we describe four typical cases of corruption to give an idea of how the corruption operates in government deals . The cases pertain to both India and abroad and are typical illustrations to show how the laid down procedures are twisted by vested interests for achieving personnel gains which undermine the transparency . However the contrast may be observed in the manner and speed with which corrective actions are taken when cases are detected abroad.

Air Force Tanker Deal US Air Force

The Boeing Company suffered two major blows to economic viability in the year 2001. First was the September 11 terrorist attack which included the use of a Boeing 767 commercial airliner that slammed into the Pentagon- an action which resulted in overall drop of commercial airline rider ship and thus the demand for new planes when the commercial aircraft demands were already in decline. This was soon followed by Pentagon's decision to award the largest ever defence contract , the next generation Joint Strike Fighter to Lockheed Martin Corporation . Within days Boeing announced a lay off of 30,000 employees and possibility of many more if they were forced out of Jet fighter business altogether. Boeing immediately commanded a largely in-house lobbyist to search for new business . Boeing had just then built in Washington operations , spending US\$ 16 million on lobbying in previous two years. In addition Boeing employed almost three dozen other DC lobby firms which included many prominent former Congressmen and

high ranking retired US military officials . Former Chairmen of the Joint Chief of Staff John M. Shalikashvili served on Boeing Board of Directors and in 2001 . Boeing also hired former deputy Defence Secretary Rudy DeLeon to lead its Washington DC office. During the year 2000 political campaign Boeing contributed more than US\$.5 m to various candidates and political parties.

Air Force Proposal

Part of Boeing plan to boost its sagging revenue was to replace Air Force's ageing fleet of Airborne refueling tankers . Because Boeing supporters realized that getting full funding for purchase of new tankers would not provide a fast enough method for solving Boeing's economic woes , they proposed a plan for the Air Force to lease up to 100 militarized versions of wide bodied 767 planes . Initial estimates indicated that Boeing would receive US \$ 20 billion over a period of next 10 years. Within days of loosing Joint Strike Fighter deal , Senator Petty Murray D- Wash who sat on the Appropriation Committee , started advancing this plan and immediately garnered support to make it a part of Defence Department Funding bill 2002.

There was immediate opposition to this plan which also included provision for millions of US \$ to purchase the tankers at the expiry of the lease period of six years . Proponents argued that KC 135 tankers , which were about 43 years old were affected by extensive corrosion requiring more than a year in maintenance depots to repair . Leasing of tankers would provide the first aircraft three years earlier than buying and supplying all tankers by 2011. The Air force argued that lease -to- buy plan which implied that aircrafts would first be leased and then

same aircrafts gradually bought over by the Air Force as and when finances were available , would cost only one percent more than buying.

However the General Accounting Office (GAO) disputed these figures by on existing tanker's readiness , reporting that the tankers generally meet the 85 percent mission capable requirements. GAO office also complained that the Air force had not provided adequate data to allow them to compare the true cost of lease plan with the cost of buying.

As the Boeing lobbyist and Congressional and Pentagon supporters of the tanker lease plan pushed harder , opposition grew . The most outspoken opponent , Senator John McCain R. Ariz attacked the lease plan as corporate welfare plan for Boeing. In March 2002 , public outcry against the companies sole source bid from Boeing called on the Air force to open the tanker contract to competition from European competitor European Aeronautical Defence and Space Co. (EADS) , manufacturer of Airbus.

This back and forth argument on best solutions to replace the ageing tankers continued through 2002 and early 2003 causing Secretary of the Air Force James Roche to challenge Boeing to propose a realistic business deal that would allow the Air Force to lease the 100 Boeing 767s for conversion as airborne tankers . Roche was very upfront about his support for the plan but he said that it should not be seen as a ' bailout ' for Boeing. The plan was finally approved by the defence department in May 2003. However, in the hearing for the plan , the ranking members of the House Armed services projection Forces subcommittee noted that the Air Force's reported study, justifying the need for the Tankers ,

had never been submitted to the Congress and contrary to the stand taken by the Air Force , it had never been submitted to the General Accounting office either. It appeared that the Department of Defence did not have a current validated study on its need for the tankers.

Even with all the opposition and clear evidence that normal procedure for submitting and supporting the new program had not been followed, it was observed by Congressmen that the plan was close to finalization in May 03. In July 2003 , the Senate Defence Appropriation Subcommittee passed a spending bill that allowed the Air Force to enter into long term deals up to US \$ 20 billion for Boeing spread over a decade. . Some critics complained that the deal would cost the taxpayers US\$ 6-9 billions more to lease rather than buy the tankers. Also the planes would have to be returned after the period of 10 years unless Pentagon paid additional money to Boeing for purchase after completion of lease period.

The Air Force agreed to show the background papers that could be legally made available to the Senators and Congressmen. As a result about 9000 pages of documents were made available to Senators McCain which showed that in November 2001 when the plan was being formulated , Boeing had apprehensions that the 767s would not perform better than the 40 year old KC 135s on one of the important criterion . Hence they had insisted on deleting the operational requirement document (ODR) stating that ' Boeing 767 should equal or outperform KC 135 ' and replacing it with statement that ' Boeing to furnish comparison of fuel offload capability to that of KC 135' . Another document (an e

mail) dated April 1st 2002 from Boeing Vice President Andrew Ellis showed that a Top Air Force official in negotiations with Boeing on the Tanker deal , Darleen Druyun , had told Boeing officials on several occasions that price submitted by EADS was US\$ 5-17 million cheaper per piece than Boeing. Druyun retired from Air Force in November 2002 and became Senior Vice President with Boeing in January 2003.

Soon after the release of these document Department of Defence started investigating allegations of irregularity and procurement improprieties . These documents showed that Boeing was intensely focused on gaining political support for a plan to keep the company's Boeing 767 manufacturing plant in Everett , Washington running. An email appeared which showed that Air Force Secretary Roche wanted Boeing Company's senior leadership to public ally defend the project . He urged that Boeing to have their friends on the Capitol Hill , think tanks and others to get more visible and vocal . Boeing Vice President Andrew Ellis said that they were in touch with White House Chief of Staff and tanker advocate Andy Card and they had ghost written several newspaper articles to help swing the public opinion as well as the officials in the Air Force . These documents also showed that Boeing, the Air Force and the White House were sensitive to the charges that tanker deal was not necessary and was a waste of money. In one e-mail a Boeing executive wrote that the Air Force is desperately looking for rationale on why USAF should pursue the 767 deal now. In nutshell these documents exposed the Boeing's heavy handed lobbying effort to sell Pentagon an Aircraft that congressional analysts said might not be needed

or even best suited for the Job. In August 2003, senator McCain requested for release of all the documents pertaining to the matter. Defence Secretary Donald Rumsfeld did not respond.

In September 2003 Secretary Roche disclosed that Air Force had not yet completed the negotiations with Boeing on the proposed lease but nonetheless urged the Congress to approve the deal. His argument was that Air Force was getting a better price than anyone else. This was criticized by analysts who said that the approval was sought even before the deal had been negotiated. The Analysts from Congress budget office and General accounting office questioned the wisdom of leasing the Air craft at higher cost rather than purchasing them outright.

In September 2003, The Defence Department Inspector General began a formal investigation of the tanker negotiations. In light of this announcement it was observed by the Senator McCain that "it would be inappropriate at this time to award a contract of this magnitude to a company that could be implicated in the investigation." McCain continued his attack on the Pentagon for its argument that corrosion problem facing KC 135 tankers could lead to grounding of the entire fleet. He noted that Aircraft Maintenance squadron was maintaining its KC 135 fleet in Afghanistan with 100 percent mission capability. He drew attention to an earlier study in the year 2001, which declared KC 135 fleet viable till 2040.

On 6th October 2003, the Chairmen of National Legal and Policy center which promotes ethics in the Government sent a letter to the Inspector General of the Department of Defence and Special agents for Defence Criminal Investigation

Service responsible for the Washington DC area, providing information about the perceived conflict of interest involving Darleen Druyun and Hiring of her daughter by the Boeing while she was serving as Air Force's Principal Assistant Deputy Secretary of Acquisition and Management and was actively participating in negotiations with Boeing for the tanker lease. The purchase of a new US\$ 870,000 home by Druyun and sale of a US \$ 600,000 by Druyun to Boeing Vice President was also highlighted.

In October 2003 , the Congressional Budget Office (CBO) released a study which confirmed the earlier position that a direct purchase of all 100 tankers was a least cost option and could save US\$ 6.7 billion compared to the lease proposal. Also the CBO study found that the earlier the proposal negotiated by the Air Force failed to meet the conditions of for an operating lease specified in congressional and Office of Management and budget(OMB) and it would not be in conformity with the standard government accounting principles. It further noted that if recorded properly , the proposal would be similar to direct purchase in both magnitude and timing. . Earlier the OMB had announced that the proposed lease failed to meet four out of six criterions for the lease arrangement laid down in the Department of Defence circulars.

In view of such severe criticism, compromise was reached in the Defence authorization conference report to provide for 20 leased aircrafts and purchase of remaining 80. Senator McCain again raised issues related to costing of the plane. He wanted Pentagon to explain why the cost of each plane finalized was US\$ 138.4 million which was US\$ 10.3 million more than the cost estimated by

Institute of Defence Analysis and 17.4 million more than an estimate by a private study.

In November 2003, Boeing fired Darleen Druyun, the ex- Air Force official who had helped negotiate the Boeing Tanker lease deal and Michael Sears , Boeing Chief Financial officer for his role in hiring Druyun as Boeing Vice President. According to Boeing, Sears violated the company's policy by communicating directly or indirectly about future employment with Druyun while she was still acting in her official capacity on matters involving Boeing. Also, an internal review found that both had attempted to conceal their misconduct. On December 1st 2003 , Chairman and Chief Executive of Boeing , Philip M. Condit resigned. On December 2nd 2003, Department of Defence ordered to withhold the process of acquisition of Boeing 767 tankers to allow Defence Department's Inspector General time to provide an independent assessment of allegations of unethical conduct.

In February 2004, the department of Defence suspended the lease plan while four separate senior level inquiries were ordered . The most significant inquiry ordered a task force of experts from Pentagon's Defence Science Board to evaluate the current aerial refueling capabilities and future tanker requirements. The National Defence University Institute was asked to look at the decision making process that shaped the tanker lease proposal including the acquisition needs associated with the program and whether competitive process was followed during the negotiations. The third investigation was the already discussed formal probe into the actions of Druyun . The fourth probe related to a

review by Department of defence General Counsel about the ethical conduct of Pentagon's officials. The last probe was to look at the current ethics practices and suggest any potential changes needed to ensure that the department officials understood and complied with the laid down protocol.

As the Investigations progressed , it became clear that Air Force was insistent on steering the tanker deal in favor of Boeing , though Air bus tankers were more capable and would cost less. After being forced to let EADS (makers of Airbus) compete, the Boeing Company was given five months to rewrite the official specification for the tankers so that it could win the nearly US\$ 20 billion deal . In the process, Boeing eliminated/ compromised 19 of 26 features that the Air force wanted originally . Then Air Force gave Air bus merely 12 days to bid for the project even though it met 20 of the original 26 parameters of the specification and offered the price that was US\$ 10 billion lower than Boeing.

In one document , Bob Gower , Boeing's Vice President for tankers noted that one objective in rewriting the specifications was to prevent the analysis from being conducted , or in other words , prevent a serious look at competition. When the specifications were rewritten, the form of Operating Requirement Document(ORD) they were so much tailored for Boeing that that were called ' KC 767 ORD'. The Defence Department Inspector General released his study of the tanker program in April 2004 and specifically called Air force to discontinue its commercial -item fixed price contract and use a more traditional military procurement approach that would require the Boeing to reveal its cost and pricing data to Air Force . The Inspector General also insisted that tankers should

be capable to refueling more than one Air craft at a time , a requirement that was originally a part of the specification but was changed when Boeing rewrote the specification.

On April 20, 2004 , Darleen Druyun pleaded guilty for violating the statutory provision which prohibits government employees from engaging in official acts which may result in benefits to their personal financial interests . Druyun acknowledged conflict of interest in negotiating employment with Boeing while she was at the same time negotiating with Boeing on tanker deal in her official capacity on behalf of the Air force .Although she initially maintained that her negotiations for employment did not influence her official actions but after failing a lie detector test Druyun admitted to favoring the firm. She admitted that “ *In negotiations with Boeing concerning the lease agreement for Boeing KC 767 tankers aircrafts, I agreed to higher price for the aircraft than what I thought was appropriate . This I did , in my view , as a parting gift to Boeing and because of my desire to ingratiate myself with Boeing , my future employers. I also acknowledge providing to Boeing during the negotiations, propriety pricing data furnished by EADS.* ”

Druyun was sentenced to serve nine months imprisonment and another seven months of house detention. She was fined US \$ 5000 and ordered to perform 150 Hrs of community service.

As a result of establishment of charges of improbity in the deal Defence department was required to undertake several corrective measures. The role of two key advisory bodies to the Defence Department i.e Defence Policy Board

and Defence Science Board which had been found unduly influenced by the lobbying from Boeing was probed so as to make their functions more transparent. Another provision prompted by the Boeing controversy was a mandate to all firms to give cost and pricing data on all contracts for non-commercial modification to commercial items in excess of US\$ 500,000/. This was done as it was found that in their costing Boeing had shown less than 1/3rd of the cost as value of the commercial aircraft while the balance was shown as development cost and non-commercial modifications which resulted in excess pricing by over US\$ 5 billion. The unfair influence by Air force Secretary Roche also came to light as the probe progressed. He resigned in October 2004. Ex-Boeing executive Micheal Sears was also given four months prison sentence and US\$ 250,000 fine.

The tanker lease deal was termed as the most serious abuse of powers and attempt by a giant organization. As to the tanker deal, the same was opened to competition and the order was split between EADS and Boeing on 50:50 basis.

LOCKHEED SCANDLE

The **Lockheed bribery scandals** encompassed a series of bribes and contributions made by officials of aerospace company Lockheed from the late 1950s to the 1970s in the process of negotiating the sale of aircraft.

The scandal caused considerable political controversy in West Germany, Italy, the Netherlands and Japan. In the U.S. the scandal nearly led to the corporation's downfall, as it was already struggling due to the commercial failure of the L 1011 airliner.

The U.S. Government had bailed out Lockheed in 1971, guaranteeing repayment of \$195 million in bank loans to the company. The Government Emergency Loan Guarantee Board, set up to oversee the program, investigated whether Lockheed violated its obligations by failing to tell the board about foreign payments. In late 1975 and early 1976, a sub-committee of the U.S. Senate led by Senator Frank Church concluded that members of the Lockheed board had paid members of friendly governments to guarantee contracts for military aircraft. In 1976, it was publicly revealed that Lockheed had paid \$22 million in bribes to foreign officials in the process of negotiating the sale of aircraft including the F-104 'Starfighter', the so-called "Deal of the Century."

Germany - Former Lockheed lobbyist Ernest Hauser told Senate investigators that Minister of Defence Franz Josef Straub and his party had received at least \$10 million for West Germany's purchase of 900 F-104G Starfighters in 1961. The party and its leader denied the allegations, and Straub filed a slander suit against Hauser. As the allegations were not corroborated, the issue was dropped.

In September 1976, in the final phase of the 1976 Bundstag election, the controversy was re-opened when questions were asked about the whereabouts

of the "Lockheed documents" within the Federal Ministry of Defence. In the course of the investigations, it emerged that most of the documents had been destroyed in 1962. The whereabouts of the documents was again discussed in a committee of inquiry meeting of the Bundestag between January 1978 and May 1979.

Italy - The Italian branch of the Lockheed scandal was centered about the bribery of Christian Democrat politicians to favor the purchase by the Italian Air Force of C 130 transport planes. The allegations were supported by political magazine *L'Espresso* and targeted the then President Giovanni Leone, forcing him to resign his post on 15h June 1978.

Japan - The scandal involved the Marubeni Corporation and several high-ranking members of Japanese political, business and underworld circles, including Finance Minister Sisaku Sato and the JASDF Chief of Staff Minoru Genda. In 1957, the Japanese Air Force wished to buy F -11 'Super Tiger' to replace the F- 86 'Sabre' then in service, but heavy lobbying by Lockheed of the key LDP figures led to the adoption of the F 104 instead.

Later, Lockheed had hired right-wing nationalist underworld figure Yoshio Kodama as a consultant in order to influence Japanese parastatal airlines, including Air Nippon Airways (ANA), to buy the L-1011 instead of the McDonnell Douglas DC 10 . On 6th February 1976, the vice chairman of Lockheed told the Senate subcommittee that Lockheed had paid approximately \$3 million in bribes to the office of Japanese Prime Minister Kakuei Tanaka for favour in the matter.

Lockheed paid Yen 2.4 billion to earn the contract from ANA. ¥500 million of the total was received by the Prime Minister. ¥160 million was received by ANA's officials. ¥1.7 billion was received by Kodama. In October, ANA announced its decision to purchase 21 Lockheed Tristar L1011s, which would cost approximately \$5 million each, even though it had previously announced options to purchase the DC-10.

Tanaka was arrested in July 1976 and was released in August on a ¥200 million (\$690,000) bond. He was found guilty by a Tokyo court on in October 1983 for violations of foreign exchange control laws but not on bribery. He was sentenced to four years in prison, but remained free on appeal until his death till 1993 .

Netherlands –Prince Bernhard received a \$1.1 million bribe from Lockheed to ensure the Lockheed F-104 would win out over Mirage -5 for the purchase contract. He had served on more than 300 corporate boards or committees worldwide and had been praised in the Netherlands for his efforts to promote the economic well-being of the country. The then Prime Minister Joop den Uyl ordered an inquiry into the affair, while Prince Bernhard refused to answer reporters' questions, stating: "I am above such things" . Prince Bernhard always denied the charges, but after his death , interviews were published showing that he admitted taking the money.

USA- Lockheed chairman of the board Daniel Haughton and vice chairman and president Carl Kotchian resigned from their posts on 13 February 1976. The

scandal also gave rise to the Foreign Corrupt Practices Act which made it illegal for American persons and entities to bribe foreign government officials.

UREA SCAM

The scam originated in September 1995 when NFL (National Fertilizer Limited) floated a global tender for the supply of 2 lakh tonnes of urea. In March 1996, the NFL under Ramakrishnan, who was appointed CMD by the Rao government bypassing established procedures, advanced the entire amount of Rs 133 crore to the firm Karsan without any bank guarantee. It is still a not known as to how the RBI/SBI waived stiff conditions attached to such deals. In fact, the Swiss bank which received an invoice for making payment to Karsan, raised certain objections and sent it back. But there was no response either from NFL or the RBI and the SBI.

Before Scam:

The company took the money but did not deliver the goods. When the matter was referred to the CBI in May 1996, P.V. Prabhakar Rao, the youngest son of former prime minister P.V. Narasimha Rao, was arrested by the Enforcement Directorate (ED)

The Central Bureau of Investigation filed a chargesheet against former prime minister P V Narasimha Rao's relative B Sanjeeva Rao, former Union minister Ramlakhan Singh Yadav's son , Prakash Chandra and seven others in the Rs 133 cr. urea scam. Among the others chargesheeted were Turkish firm Karsan Ltd's executives Tuncay Alankus and Cihan Karanci, former National

Fertilisers Limited managing director C K Ramakrishnan, its former executive director Dilbagh Singh, Karsan's Indian agent M Sambasiva Rao, one D Mallesam Goud and Brazilian national A E Pinto

The facts emerged that NFL paid the entire contract amount of \$ 37.62 million in advance on November 29, 1995, for the purchase of urea. But the accused shared the amount amongst themselves without honouring the contract. Alankus "dishonestly" transferred \$ 28.10 million of the payment to his personal account with Pictet Bank, Geneva, \$ 1.1 million to Karachi account in the same bank and \$ 4 million to a Dubai-based company, the chargesheet said. The \$ 4 million was subsequently brought to India through *hawala* channels and paid to Sambasiva Rao, Sanjeeva Rao and Goud, .He also transferred another \$ 200,000 to Sambasiva Rao's bank account in Hyderabad.

Bofors Scam

The amount involved in this much publicized case was much less in comparison to some of the scams that followed later i.e. Urea Scam , Petrol Pump Allotment Scam, fodder scam etc. The amount of kickbacks allegedly involved was approximately RS 64 Cr and atleast the guns arrived and proved their worth in the Kargil war against some tough enemy postures . However when its news broke out , it became a cause of major controversy in India.

The Bofors howitzer deal was a \$1.4 billion contract signed between the Rajiv Gandhi government and AB Bofors of Sweden for supplying 410 nos. 155mm

field howitzers (Artillery Guns) and accessories to the Indian Army. The deal was signed on March 24, 1986.

During Late Prime Minister , Indira Gandhi's tenure in the early 1980s, the Indian Army indicated its need for the acquisition of howitzers. The Ministry invited bids from various arms-manufactures and suppliers. Four suppliers emerged as strong contenders to win the gun contract which included Sofma of France and Bofors of Sweden.

Bofors and Sofma -The Army after comparing, contrasting, and cross-checking the merits of the howitzers and tenders submitted by the four contenders, decided to choose between the French gun Sofma and the Swedish gun Bofors. Both the guns had their share of supporters in the Indian Army. For a while, it appeared that the French gun Sofma would be preferred over its nearest competitor, as it was offered at the lowest price with other incentives. However, the Bofors gun had something unique to offer: Its shoot-and-scoot capability, that is, the gun could shoot and move away from the place before enemy radars could locate its position.

The government , tried to speed up the selection process. It was during this phase, it made the announcement that the government would not deal with any defence agents, and that no commission should be paid by the arms manufacturers to any deal agent probably with the intention of freeing the process of arms procurement from the involvement of agents.

Hence Bofors had to change its Indian agent, Win Chadha. Bofors declared that Win Chadha was no longer its agent in India and that no commission would

be paid to him. The Swedish company instead retained Chadha as its consultant in India for a fixed amount, for reasons only known to the company. In other words, Bofors conveniently sidestepped the issue of "no agent, no commission" by renaming its "agent" as "consultant" and reworking the "commission" to be paid to him as "consultation fee". The \$1.4 billion deal was signed on March 24, 1986.

After a year, on April 16, 1987, the Swedish Radio claimed that AB Bofors paid kickbacks to several officials to win the howitzer deal. The Bofors controversy has raged since then. The case is still under various stages of investigation as well as under trial.

serious corruption report... The Government set up a Committee on prevention of corruption (Popularly known as Santhanam Committee) to review the problem of corruption and to make recommendations. Among other things, the Santhanam Committee noted the conspicuous absence of a dynamic integration between the Ministry of Mines and the Sub-divisional Director in the Ministry of Home Affairs. The Committee also raised the question, since that the Adversarial Party, not the judge on its own conduct. As a follow up of the recommendations made by the Santhanam Committee, The Central Vigilance Commission (CVC) was established under Ministry of Home Affairs resolution (17/29/84 An) dated 11 February 1984. The CVC was conceptualized as an independent body with extensive general experience and sound moral integrity in the field of U.S. Administration. The establishment of the Commission was considered a significant step towards

CHAPTER – III

ROLE OF CVC AND CBI AS ANTI CORRUPTION WATCHDOGS

In this chapter we shall discuss the role of CVC as an apex body in the country looking into the matter of integrity and probity in the public life and its present working as well as the contribution of CBI as an investigative arm in anti corruption watchdog.

In June 1962 , during the debate on the demands of grants for the ministry of Home Affairs , many members of Parliament (MPs) showed their deep concern over the matter of corruption in the administration. In the background of the serious concern raised by the Member of Parliaments in June 1962 , the Government set up a committee on prevention of corruption (Popularly known as Santhanam Committee) to review the problem of corruption and to make recommendations . Among other things , the Santhanam Committee noticed the conspicuous absence of a dynamic integration between vigilance units in various Ministries and the Administrative division in the Ministry of Home Affairs . The Committee also raised the important issue that the Administration could not be a judge on its own conduct. As a follow up of the recommendations made by the Snthanam Committee , The Central Vigilance Commission (CVC) was established vide Ministry of Home Affairs resolution no. 24/7/64-AVD dated 11th February 1964. The CVC was conceptualized as an apex body for exercising general superintendence and control over vigilance matters in the Administration. The establishment of the commission was considered essential for evolving and

applying common standards in deciding cases involving lack of probity and integrity . The functions of the CVC were advisory in nature and it has a measure of independence and autonomy.

Powers and functions of CVC as per the resolution of 1964- The main powers and functions assigned to the CVC in terms of the Home Ministry resolution were as under-

- To undertake an inquiry or cause an inquiry or investigation to be made into any transaction in which a public servant working in any organization , to which executive control of Government of India extends , is suspected or alleged to have acted for an improper purpose or in corrupt manner
- Tender independent and impartial advice to the disciplinary and other bodies in disciplinary cases having vigilance angle at different stages viz. investigation, inquiry , appeal , review etc.
- Conduct oral inquiries through its officers (Commissioners for Department inquiries) on behalf of the administrative authorities in cases of disciplinary proceedings instituted against public servants .
- Exercise a general check and supervision over vigilance and anti corruption work in the Ministries / Departments of Government of India , PSEs , Public Sector banks , Insurance Companies , autonomous bodies and other organizations etc.
- Initiate at such intervals , review of procedures and practices and advice the organizations to modify the existing procedures which appear to afford the scope of the corruption.

- Scrutinize and approve the appointment of Chief Vigilance officers who head the vigilance units in various organizations and assess their work .
- Conduct through its organization of Chief Technical Examiners , independent technical organization mainly from vigilance angle of construction and other related works undertaken by various Government organizations.

The CVC was set up under the force of an executive order of the Government. The Santhanam Committee had recommended that after a suitable period of experiments and trials , the Government should take steps to put CVC on statutory basis . No action was taken by the Government on this part of the recommendation and CVC remained as a toothless body till the intervention of the Hon'ble Supreme Court in the Vineet Narain case. As per the directions given by the Supreme Court in the Civil writ petition case (Shri Vinet Narain & others) CVC was accorded statutory status , through an ordnance dated 25.8.1998 . The ordnance inter-alia conferred the powers upon the CVC to exercise superintendence over the functioning of Delhi Police Special Establishment (CBI) and review the progress of investigation being conducted by them insofar as offences under the Prevention of Corruption Act , 1988 are concerned . Subsequently the Government introduced the CVC bill 1998 in the Parliament which was passed by the Lok Sabha on 15.3.99. CVC ordnance was also re-promulgated on 8.1.99. The bill was however pending in Rajya Sabha and the ordnance was to expire on 5.4.99. On 4.4.99 Government resolved that CVC as constituted under the ordnance of 25.8.98 would continue to discharge its

functions and duties. The CVC bill was again introduced in the Lok Sabha on 20th Dec 1999 and was referred to a Joint Committee of both the houses of Parliament. Finally the CVC Act came into force by a notification after it was passed in the Parliament after which the CVC finally got its status as Statutory body.

Powers under the CVC Ordinance/ Act –

The Central Vigilance Commission under the CVC Ordinance was empowered to-

- Exercise superintendence over the functioning of the Delhi Police Special Establishment (CBI) in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act 1988.
- Review the Progress of investigations conducted by DSPE(Delhi Special Police Establishment know popularly as CBI) into offences alleged to have been committed under the Prevention of Corruption Act.
- Make recommendations for the appointments to the posts of Director , CBI and Director of Enforcement .
- Exercise the powers of a civil court trying suit under the Code of Civil Procedure 1908 while inquiring or causing an inquiry or investigation to be made into any complaint of corruption against a public servant , and in particular in respect of the following matters -
 - Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
 - Requiring the discovery and production of any document;

- Receiving evidence on affidavits ;
- Requisitioning any public record or copy thereof from any court or office;
- Issuing commissions for the examination of witnesses or documents ;
- any other matter which may be prescribed.

Commission's Jurisdiction- The advisory jurisdiction of the commission in so far as it relates to vigilance matters extends to all organizations to which the executive control of the Union extends. However, for practical reasons, the Commission presently advises only on vigilance cases pertaining to the following specified categories of officials;

- **Gazetted Central Government officials ;**
 - Officers two levels below the Board level appointees in the Public Sector Enterprises of the Central Government ;
 - Officers of the rank of Scale –III and above in the public sector banks ;
 - Officers of the rank of Assistant Managers in the Insurance Companies ;and
 - Officers in autonomous bodies / local authorities or societies comparable in status to that of Gazetted officers of the Central Government.

Composition of Central Vigilance Commission

The Commission is envisaged to be a multi- member Commission , consisting of the Central Vigilance Commissioner (Chairman) and not more than two Vigilance Commissioners as its members. The Appointments to the post of CVC and VCs are to be made by the President by warrant on the recommendations of

a committee consisting to (i) The Prime Minister (II) The Minister of Home Affairs and (iii) The leader of the opposition in Lok Sabha .

Composition of functional arms assisting the CVC is as below-

The Secretariat

The Secretariat consists of a Secretary of the rank of Additional Secretary to the GOI, one officer of the rank of Joint Secretary to the GOI, ten officers of the rank of Director/Deputy Secretary, four Under Secretaries and office staff.

Chief Technical Examiners' Wing (CTE)

The Chief Technical Examiner's Organization constitutes the technical wing of the Central Vigilance Commission (India) and is manned by two Engineers of the rank of Chief Engineers (designated as Chief Technical Examiners) with supporting engineering staff. The main functions assigned to this organization are:

- Technical audit of construction works of Governmental organizations from a vigilance angle;
- Investigation of specific cases of complaints relating to construction works;
- Extension of assistance to CBI in their investigations involving technical matters and for evaluation of properties in Delhi; and
- Tendering of advice/assistance to the Commission and Chief Vigilance Officers in vigilance cases involving technical matters.

Commissioners for Departmental Inquiries (CDIs)

There are fifteen posts of Commissioners for Departmental Inquiries (CDI) in the Commission, 14 in the rank of Deputy Secretaries/Directors and one in the rank of Joint Secretary to Government of India. The CDIs function as Inquiry Officers to conduct Oral inquiries in departmental proceeding initiated against public servants.

The working of the CVC can be summarized as under-

- Advisory role of the Commission- The Central Vigilance Commission acts as an apex body for rendering impartial and objective advice to the disciplinary authorities on vigilance related cases where a public servant is allegedly involved. In its functioning , the Commission is independent and therefore imparts an element of externality and objectivity in decision making process of the administrative authorities. In addition to the impartiality and objectivity the functioning of the Commission also ensures consistency and common standards of proceedings for similar kinds of cases amongst various Ministries and departments of the Government of India.
- Complaints- Complaints constitute an important source of information leading to the exposure of misconduct and malpractices and for establishing such cases prima facie. Complaints received by the Commission are duly scrutinized and if they contain sufficient details to justify investigation, forwarded to the Chief Vigilance Officer (CVO) of the department

concerned or the CBI for further investigation. The Commission had observed in the past that a large number of complaints received were either anonymous or pseudonymous in nature. A peculiar nature of these complaints noted by the Commission was that the complaints were resorted to specially when a public servant was due for promotion or an executive was likely to be called by the Public Enterprise Selection Board for the interview to the post of director or CMD etc. if nothing else, such complaints achieved the objective of delaying the promotion process which demoralized the honest public servants. Hence the Commission vide its instructions of 29.6 .99 decided not to take any action on such anonymous or pseudonymous complaints.

The complaints received by the departments organizations are scrutinized by the departments / organizations to assess whether the allegations merit investigation. If the administrative authorities decide to conduct a preliminary inquiry into the allegation, it is necessary for them to forward a preliminary enquiry report to the Commission for its advice. Preliminary investigation report is also to be sent in cases forwarded by the CVC for investigation. In cases where CBI conducts preliminary investigation against a public servant who falls within the jurisdiction of the Commission, the concerned department is required to offer its specific comments on the recommendations made by the CBI. In respect of other public servants not falling within the normal advisory jurisdiction of CVC, the matter is required to be referred to CBI only if there is disagreement between the department

and the CBI. The advise of the Central Vigilance Commission fall in two categories;

-First Stage advice- The investigation reports furnished by the CVO or the CBI are examined in the Commission . The Commission depending upon the facts and circumstances of each case advises initiation of criminal or departmental proceedings , issue of warning or closure of the case.

-Second Stage advice- The departmental proceedings which are conducted when prima facie case for imposition of major penalty is established require departmental enquiry to be instituted. The departmental enquiry is conducted either in-house or by the Commissioner for departmental enquiries borne on the strength of the Commission . The inquiry report in either case is placed before the Commission for second stage of advice . The Commission also tenders second stage of advice in those cases where departmental inquiries for minor penalty were initiated on Commission's advice and the department proposes to close the case after considering the statement of defence.

-Appeal/ Revision/ Review Stage- The Commission is also consulted at the appeal/ revision/ review stage in those cases where the appellate/ reviewing authorities propose to modify or set aside the penalty which was imposed on the public servant in consultation with the Commission.

Intensive examination of Civil and other works by C.T.E.O. The Chief Technical Examiner's organization was initially created in 1957 as a distinct wing of the erstwhile Ministry of Works, Housing and Supplies for the purpose of conducting

a technical audit of the works of Central Public Works Department. In 1964, the Santhanam Committee recommended for transfer of this organization to CVC so that its services could be made available to CBI and/ Or the CVC . The recommendations were accepted and the organization now works as a technical wing of the CVC. The jurisdiction of the organization is co-terminus with that of the CVC . The organization was engaged in inspection of civil / electrical/ horticulture works till 1999. However due to large scale industrialization of the country the expenditure in other fields has rapidly increased in the areas of Oil/ Steel/ Power/ Defence/ Telecom/ Railways etc. Hence the inspection of stores purchase contracts and works for computerization of banks etc. were also started after 1999.

Efficacy of CVC in Combating Corruption - The objectives of providing a corruption free regime by the administration depend to a large extent on effectiveness of the vigilance set up, on the helm of which is CVC . Vigilance is essentially a quasi judicial job and to be effective it has to be objective , speedy , consistent and transparent . The figures provided in the Annual Report of the Commission reveal that there has been a steady increase in the number of cases received by the Commission as shown below (Source -Annual Report of CVC)-

Serial No.	Year	Number of Cases received in the Commission	Number of Cases Disposed off
1	1996	4263	4246
2	1997	4304	5747
3	1998	5076	5064

4	1999	6141	5168
5	2000	6285	6438
6	2001	6774	6612
7	2002	6465	6626
8	2003	6993	8042
9	2004	5987	6134
10	2005	5394	5314
11	2006	4798	4683

Similarly the punishment imposed on the Commission's advice are summarized as below-

Year	Prosecution	Major Penalty	Minor Penalty	Administrative Action	Total
1996	1	293	349	283	926
1997	12	430	429	317	1188
1998	27	860	917	582	2386
1999	60	897	627	378	1962
2000	51	1116	876	507	2550
2001	53	1067	861	661	2642
2002	51	1162	957	1360	3530
2003	117	1432	1372	568	3499
2004	120	1951	1616	611	4298
2005	141	1084	1136	462	2823
2006	150	1024	936	332	2442S

Although in spite of these statistics , some critics may argue that trend of corruption from the public life has not shown any perceptible sign of reduction , however there is no doubt that things would have been much worst if a statutory watchdog in the form of CVC was not there and the vigilance functions were left solely in the hands of the administrators.

Central Bureau of Investigation (CBI)

The Central Bureau of Investigation traces its origin to the Special Police Establishment (SPE) which was set up in 1941 by the Government of India even prior to independence. The functions of the SPE then were to investigate cases of bribery and corruption in transactions with the War & Supply Department Of India during World War II. Superintendence of the S.P.E. was vested with the War Department.

Even after the end of the War, the need for a Central Government agency to investigate cases of bribery and corruption by Central Government employees was felt. The Delhi Special Police Establishment (DSPE) Act was therefore brought into force in 1946. This Act transferred the superintendence of the SPE (or DSPE as known after 1946) to the Home Department and its functions were enlarged to cover all departments of the Govt. of India. The jurisdiction of the SPE extended to all the Union Territories and could be extended also to the States with the consent of the concerned State Government.

The DSPE acquired its popular current name, Central Bureau of Investigation (CBI), through a Home Ministry resolution dated 1.4.1963. Initially the offences that were notified by the Central Government related only to corruption by Central Govt. servants. In due course, with the setting up of a large number of public sector undertakings, the employees of these undertakings were also brought under CBI purview.

From 1965 onwards, the CBI has also been entrusted with the investigation of Economic Offences and important conventional crimes such as murders, kidnapping, terrorist crimes, etc., on a selective basis. Similarly, with the nationalization of the banks in 1969, the Public Sector Banks and their employees also came within the ambit of the CBI.

The SPE initially had two Wings. They were the General Offences Wing (GOW) and Economic Offences Wing (EOW). The GOW dealt with cases of bribery and corruption involving the employees of Central Government and Public Sector Undertakings. The EOW dealt with cases of violation of various economic/fiscal laws. Under this set-up, the GOW had at least one Branch in each State and the EOW in the four metropolitan cities, i.e, Delhi, Madras, Bombay and Calcutta. These EOW Branches dealt with offences reported from the Regions, i.e, each Branch had jurisdiction over several States.

As the CBI, over the years, established a reputation for impartiality and competence, demands were made on it to take up investigation of more cases of conventional crime such as murder, kidnapping, terrorist crime, etc. Apart from

this, even the Supreme court and the various High Courts of the country also started entrusting such cases for investigation to the CBI on petitions filed by aggrieved parties. Taking into account the fact that several cases falling under this category were being taken up for investigation by the CBI, it was found expedient to entrust such cases to the Branches having local jurisdiction.

It was therefore decided in 1987 to constitute two investigation divisions in the CBI, namely, Anti-Corruption Division and Special Crimes Division, the latter dealing with cases of conventional crime, besides economic offences.

Other provisions for Vigilance related functions

Chief Vigilance Officer- Each of the central or state government Ministries , public sector undertaking or administrative unit which has relationship with the central or state exchequer for funding has an officer Chief Vigilance officer (CVO) attached to it . CVO heads the vigilance division of the organization concerned and acts as a special assistant/ advisor to the Chief Executive in all matters concerning vigilance. He also acts as a link between his organization and the Central Vigilance Commission as also with CBI. The functions of the CVO include collection of the intelligence about the corrupt practices committed or likely to be committed by the employees of the organization , investigation into verifiable allegations reported to him , processing investigation report for further consideration of the disciplinary authority concerned , referring matter to CVC for advise and taking steps to prevent improper / corrupt practices . Hence CVO is

an important functionary , who is internal to the organization so far as vigilance matters are concerned.

Legal provisions against corruption- While discussing the role of various corruption prevention bodies , it will also be relevant to briefly introduce legal provisions under which offences committed relating to corruption are dealt with. Central Government enacted Prevention of Corruption Act 1988 which applies on all the public servants . Under this act a Public Servant taking gratification other than legal remuneration in respect of an official act or obtains or agrees, to accept or attempts to obtain from any person , for himself or for any other person, shall be punishable with imprisonment which shall be not less than 6 months but which may extend to 5 years and shall also be liable to fine . This act provides a legal framework for prosecution of a person demanding or receiving any kind of illegal gratification in cash or kind during the discharge of his official functions.

It can therefore be concluded that having taken cognizance of the problem of corruption, the government has progressed toward providing institutional set ups which are independent of the executive in fighting this menace. The legal framework is also in place in the country which is capable of dispensing an effective anti corruption regime.

CHAPTER IV

Drive for Transparency- International and National Efforts

The issue of corruption has been engaging the attention of development economists as well as international bodies like United Nations as well as other financing / donor bodies like The World Bank and the international Monetary Fund who consider corruption to be a major obstacle to development .Several efforts were made to develop tools which could act as effective indicators of Corruption or measures of Transparency so that the donor agencies could make an objective decision on which countries to assist and developmental efforts could be maximized as also to know in a time series manner whether a recipient country had succeeded in efforts to minimize corruption over a period of time. Besides there have been efforts by several NGOs both within India and abroad to work as watchdogs on this important issue which is coming in way of development and poverty alleviation . In this chapter we shall take stock of some such efforts

Transparency International (TI) is a leading international Non Governmental Organization addressing corruption. This includes, but is not limited to political corruption It is widely known for producing its annual Corruptions Perceptions Index (see below), a comparative listing of corruption worldwide which was first released in 1995 .

TI is organised as a group of some 100 national chapters, with an international Secretariate in Berlin , Germany. Originally founded in Germany in 1993 as a

not-for-profit organisation, TI is now an international non-governmental organisation. It has declared that its mission is to create change towards a world free of corruption. It claims to reject any idea of "northern superiority" regarding corruption, and is committed to exposing corruption world-wide. Since 1995, TI has been releasing an annual indicator called 'Corruption Perception Index' (CPI). It also publishes an annual Global Corruption Report, a Global Corruption Barometer and a Bribe Payers Index. TI does not undertake investigations on single cases of corruption or expose individual cases. Rather, it develops tools for fighting corruption and works with other civil society organisations, companies and governments to implement them. The goal of TI is to be non-partisan and to build coalitions against corruption.

TI's biggest success has been to put the topic of corruption on the world's agenda. International Institutions such as the World Bank and the International Monetary Fund now view corruption as one of the main obstacles for development.

Corruption Perception Index (CPI)- TI has developed an index from 0 to 10 comprised of surveys of specialist organizations, opinion leaders, business officials and human rights monitors who live, work or travel extensively in each of the countries ranked. The higher the score, the less corrupt the country. Tied for No. 1 in the year 2007, with a CPI "score" of 9.4 are Denmark, Finland and New Zealand. At the bottom, with a score of 1.4 are Somalia and Myanmar.

CPI is today the one of the most commonly-used measure for corruption in countries worldwide. Based on many different studies, it is known for its accuracy. To form this index, TI compiles surveys that ask specialists, opinion leaders, business officials and human rights monitors who live, work or travel extensively in each of the countries ranked, both in and outside the countries they are analyzing, their perceptions of how corrupt a country is. It does not rely on the number of actual corruption cases since laws and enforcement of laws differ significantly from country to country.

The CPI has certain limitations. The rankings are heavily subjective, and the nature of corruption, particularly in the most severely corrupt nations, can differ markedly. It is therefore not easy to measure corruption and the index may have inaccuracies. Then there is a danger of a self-fulfilling prophecy. An analysts might be influenced by past corruption indices and therefore not realise how serious the issue is. A very minor positive change in index could undermine the real extant of corruption where the optimists would like to look at any such change as improvement and become complacent. Further, the use of the index values in time-series statistics is problematic due to the way it is calculated. The set of people who are surveyed may change resulting in complete change in the perception which are highly subjective.

Keeping these limitations in mind, the analysis of the index indicates that above an index of 5, 46 countries figure, which may be stated to have the corruption problem existing on limited and manageable scale. At this level, the common

man normally does not have to generally experience corruption atleast for day to day matters. Below a CPI score of 5, there are 133 countries . This includes nations such as Italy, Greece, South Africa, Brazil, India and China. Between the CPI score of 5 and 3, where the corruption is considered to be moderate , 53 nations figure . India with a score of 3.5 just manages to fall in this range. India has been ranked 72nd along with China , Brazil and Mexico Unfortunately, most of the low ranking countries are those whose populations are least equipped to deal with the consequences--the world's most deprived nations.

Bribe Payers Index (BPI) is a measure of how willing a nation appears to comply with demands for corrupt business practices. The first BPI was published by Transparency International in 1999 . The BPI is a ranking of 30 of the leading exporting nations propensity of firms with headquarters within their borders to bribe when operating abroad. It is based on the responses of 11,232 business executives from companies in 125 countries . The 30 economies ranked in the BPI are: Australia , Austria, Belgium, Brazil, Canada, China, France, Germany, Hong Kong, India, Israel , Italy, Japan, Malasia, Mexico, the Nethelands, Portugal, Russia , Saudi Arabia, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Turkey ,the United Arab Emirates, the United Kingdom and the United States .

These countries are among the leading international or regional exporting countries, whose combined global exports represented 82 percent of the world total in 2005 . The higher score means that a firm belonging to the particular

country is not willing to pay bribes while doing business abroad. As per the index compiled for Switzerland and Sweden top the list with scores of 7.81 while India is at the bottom with a score of 4.62 with China just staying ahead of it with index of 4.94.

United Nations Convention against Corruption – The convention was adopted by the United Nations General Assembly on 31st October 2003. The convention takes note of the link between corruption and various economic crimes like money laundering. It makes it imperative upon the signatories to develop and implement or maintain effective, coordinated anti corruption policies that promote the participation of society and reflect the principles of rule of law. Various clauses of the convention are related with vast areas like anti- corruption laws and their enforcement, system of recruitment, retention and promotion in public sector based on merit and transparency, education and training etc. Till January 2007, there were 140 signatories. India has signed the convention but is yet to ratify the same.

The OECD Anti-Bribery Convention (officially *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*)- is a convention of the Organisation of Economic Cooperation and Development (OECD) aimed at reducing corruption in developing countries by encouraging sanctions against bribery in international business transactions carried out by companies based in the Convention member countries. Its goal is to create a truly level playing field in today's international business environment. The

convention came into effect in February 1999. Countries that have signed the Convention are required to put in place legislation that criminalises the act of bribing a foreign public official.

The OECD has no authority to implement the convention, but instead monitors implementation by participating countries. Countries are responsible for implementing laws and regulations that conform to the convention and therefore provide for enforcement. The OECD performs its monitoring function in a two-phased examination process. Phase 1 consists of a review of legislation implementing the provisions adopted in the conventions, in the member country with the goal of evaluating the adequacy of the laws. Phase 2 assesses the effectiveness with which the legislation is applied.

World Governance Indicators (WGI) of the World Bank- The World wide Governance Indicators (WGI) were developed as a result of research program of world bank institute and research department of world bank initiated by Daniel Kaufmann and Aart Kraay in 1990. The indicators cover 212 countries and measure six dimensions of Governance . One of these indicators is ' Control of Corruption' which implies Measuring the extant (or control of it) to which public power is exercised for private gain , including both petty grand forms of corruption as well as 'capture ' of the state by elites and private interests. The index can take values from +2.5 to - 2.5 with higher value being indicative of better control. .The indicators are compiled for 212 countries since 1996(biannual till 2002, thereafter annually).Indicators are based on several hundred

individual variables drawn from 33 data sources donated by 30 different organisations which can be assigned to six broad categories. According to WGI index on control of corruption , India has a score of -0.21 in 2006 . Although it is not a healthy score when compared with countries like USA((1.3) , it may be seen in the backdrop of the earlier score of -0.36 recorded in 1996 from which there is an improvement.

Fight against corruption in India-While no similar statistical tools have been developed within India several NGOs have come up which have taken fight against corruption as a mission . An NGOs named ' Parivartan' has taken help of ' Right to Information Act' as a tool to fight corruption . Similarly Chennai based NGO Fifth Pillar has started a rather unique initiative against corruption. It's called a zero rupee note – a note that vows to take on the babus who ask for a bribe. Similarly Transparency International India Chapter has also been established.

Procurement procedures in major Central Government Ministries and Departments

Government of India along with its Public Sector undertakings is one of the largest single purchaser of goods and services in the country. In this chapter the extent of purchases made by these companies and the prevailing provisions of procurement procedure have been examined in so far as the position of anti – corruption measures prior to introduction of ‘ integrity law ‘ is concerned.

The DGS&D(Directorate General of Supplies and Disposal) , with headquarters at New Delhi was initially created to render procurement services to the central and state governments in 1951. After the liberalisation in 1991 , adhoc procurement were and the main function now is to conclude **rate contracts** . The Supply Wing has commodity-wise Purchase Directorates such as Information Technology, Electrical Stores, Mechanical Engineering, Automobiles, Steel & Cement, Structural Engineering, Hardware, Workshop & Machine Tools, Wool & Leather, Paper & Paper Products, Oil & Chemicals.DGS&D has been identifying such items, whose anticipated annual purchase by Government organizations is more than Rs. 25 lakhs a year, and bringing such items on rate contract. DGS&D charges a fee of 1% of the contract value from the indenting Departments. Total value of supply orders based on DGS&D rate contracts was worth Rs 3500 Cr. Appx for the year 2004-05(Press release of Dept. of Commerce date 3rd April 2006)

Ministry of Railways is another major department of the central government which undertakes procurement of several thousand types of spare parts , capital items (wagons and coaches) and consumables specific to its needs. It has an annual purchase Budget of about Rs 12,000 crore with additional Rs 10,000 crore expenditure on planned works which include direct purchases of rolling stock (i.e wagons, coaches, Electrical multiple units) as well as contracts for works(new lines, gauge conversions , line capacity works)

Ministry of Defence is by far the largest purchaser of Arms and Defence equipment which include some of the technologically most advanced systems like fighter aircrafts, naval ships, submarines etc. The total capital budget of Defence Ministry is Rs 35000 Cr in capital expenditure(expenditure on purchase of new arms and equipment) . Further expenditure of appx. Rs 17000 cr. is made on account of revenue purchases (spares and consumables)

The figures of purchases made by some of the large sized PSUs run into several thousand crores of rupees. ONGC alone spent nearly US \$ 3 Bn. (appx. 12000 Cr. during last five years .

Procurement procedures with particular reference to check on corruption-

Manual of policies and Procedures for purchase of Goods -At the apex of the legal framework governing public procurement is article 299 of the constitution which stipulates that contracts , legally binding on the Government should be executed in writing by the officers specifically authorized to do so. Further the Indian Contract Act 1872 and the Sale of Goods Act 1930 are the major legislations governing sale / purchase of goods in general. There is no law

exclusively governing public procurement of goods . However comprehensive guidelines have been laid down in General Financial Rules (GFR) 2005 and Delegation of Financial Powers Rules (DFPR) , various guidelines issued by the Government on purchase preference to handloom sector, small scale industries as well as Central Public Sector Undertakings as also the guidelines issued by the Central Vigilance Commission (CVC) to increase transparency and objectivity in public procurement .

To achieve these objectives stated in foregoing paragraph , the general policies for procurement of goods have been compiled under the 'Manual of policies and Procedures for purchase of Goods ' while the guidelines for 'works contracts ' through which contracts for civil or electrical works are finalized , have been covered vide Manual of policies and Procedures for works contracts ' which has been issued by Department of Expenditure , Ministry of Finance in the year 2006 . The clauses of the manual which pertain to the area of Transparency are covered in the preamble of the Manual .

Certain paras of the Manual relate to Transparency, Competition, Fairness and Elimination of Arbitrariness . It states that Public buying should be conducted in a transparent manner to bring competition, fairness and elimination of arbitrariness in the system. The following are some important measures to achieve the same and, thus, secure best value for money:

- The text of the tender document should be user-friendly, self-contained, comprehensive, unambiguous, and relevant to the objective of the purchase. The use of terminology used in common parlance in the industry should be preferred.

- The specifications of the required goods should be framed giving sufficient details in such a manner that it is neither too elaborately restrictive as to deter potential tenderers or increase the cost of purchase , nor too sketchy to leave scope for sub-standard supply.

The specifications must meet the essential requirements of the user department. Efforts should also be made to use standard specifications, which are widely known to the industry.

- The tender document should clearly mention the eligibility criteria to be met by the tenderers such as minimum level of experience, past performance, technical capability, manufacturing facilities, financial position, ownership or any legal restriction etc.

- Restrictions on who is qualified to tender should conform to extant Government policies and be judiciously chosen so as not to stifle competition amongst potential tenderers.

- The procedure for preparing and submitting the tenders; deadline for submission of tenders; date, time & place of public opening of tenders; requirement of earnest money and performance security; parameters for determining responsiveness of tenders; evaluating and ranking of tenders and criteria for full or partial acceptance of tender and conclusion of contract should be incorporated in the tender enquiry in clear terms.

-Tenders should be evaluated in terms of the criteria already incorporated in the tender document, based on which tenders have been received. Any new

- condition, which was not incorporated in the tender document, should not be brought into consideration while evaluating the tenders.
- Sufficient time should be allowed to the tenderers to prepare and submit their tenders.
 - Suitable provisions should be kept in the tender document allowing the tenderers reasonable opportunity to question the tender conditions, tendering process, and/or rejection of its tender and the settlement of disputes, if any, emanating from the resultant contract.
 - It should be made clear in the tender document that tenderers are not permitted to alter or modify their tenders after expiry of the deadline for receipt of tender till the date of validity of tenders and if they do so, their earnest money will be forfeited.
 - Negotiations with the tenderers must be severely discouraged. However, in exceptional circumstances, where price negotiations are considered unavoidable, the same may be resorted to, but only with the lowest evaluated responsive tenderer, and that too with the approval of the competent authority, after duly recording the reasons for such action.
 - The name of the successful tenderer to whom the supply contract is awarded should be appropriately notified by the purchase organization for the information of general public, including display at notice board, periodical bulletins, website etc.

Secretary, Department of Expenditure while issuing the manual in August 2006 had advised individual Departments/ Ministries to issue detailed guidelines / tender formats etc suitable to the need of each department. Accordingly the extant procurement procedures / codes/ manuals of the following Ministries/ Departments / organizations have been examined which constitute major share of government procurements –

Ministry of Defence – Ministry of Defence have issued Defence Procurement Procedure (DPP2006) and Defence Procurement Manual(DPM 2006) which are adopted for Capital and revenue procurement of stores/ equipment respectively.

Ministry of Railways- Ministry of Railways have a detailed ' Indian Railway Code for Stores Department Volume I & II) which deals with procedure for procurement of Railway Stores .

DGS&D- DGS&D Manual - The publication is the guiding principle for all policies and procedures to followed by DGS&D for Purchases and Inspection functions and was last revised in 1999.

Specific provisions for Transparency - During the perusal of the codes/ manuals of the Ministries/ departments mentioned above the specific provisions relating to anti-corruption measures / transparency were noted as under-

-Ministry of Defence have made specific provisions in Defence Procurement Procedure

that the Seller has engaged any agent, intermediary, and shall be required to pay

Penalty For Use Of Undue Influence- The Seller is required to undertake that he has not given, offered or promised to give, directly or indirectly any gift, consideration, reward, commission, fees brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Contracts. Any breach of the aforesaid undertaking by the seller or any one employed by him or acting on his behalf shall entitle the Buyer to cancel the contract and all or any other contracts with the seller and recover from the seller the amount of any loss arising from such cancellation.

Integrity Pact.- Further signing of an 'Integrity Pact' would be considered between government department and the bidder for schemes exceeding Rs 100 Crs. The Integrity Pact is a binding agreement between the agency and bidders for specific contracts in which the agency promises that it will not accept bribes during the procurement process and bidders promise that they will not offer bribes. Under the IP, the bidders for specific services or contracts agree with the procurement agency or office to carry out the procurement in a specified manner. The details of integrity pact shall be discussed in the subsequent chapter.

Agents/ Agency Commission - The Defence Procurement Procedure does not permit the seller to engage any individual or firm, whether Indian or foreign to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the Seller. It also does not permit any amount to be paid for such an activity. In other words no agents are permitted if it is established at any time

that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years.

Access To The Books Of Accounts- There is a provision which states that in case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence,

the Seller, on a specific request of the Buyer shall provide necessary information/inspection of the relevant financial documents/ information.

Provisions in Railways –The general provisions specified by CVC in this regard apply to Railway Stores code also. the Railways has decided to take advantage of IT by launching a pilot project on e-procurement. The Ministry of Railways has already approved the Rs 60-crore project and released Rs 4 crore this year for the pilot project, being implemented at Northern Railway.

Provisions in DGS&D – The general provisions specified by CVC regarding ensuring transparency like publishing tenders on website apply to DGS&D. DGS&D have already started large scale e- procurement since the year 2006 which will result in greater transparency.

CHAPTER VI

SALIENT FEATURES OF INTEGRITY PACT

Before examining the issue of Integrity Pact in details , a brief background to the matter would be of relevance . Originally called "Islands of Integrity", the Integrity Pact (IP) is a tool developed during the 1990s by Transparency International (TI) to help governments, businesses and civil society which are prepared to fight corruption to do so in the field of public contracting It consists of a process that includes an agreement between a government or government department (to which we refer here as the Authority) and all bidders for a public sector contract. It contains rights and obligations to the effect that neither side will pay, offer, demand or accept bribes, or collude with competitors either at the stage of negotiation of the contract, or while implementing the contract . It also stipulates that that bidders will disclose all commissions and similar expenses paid by them to anybody in connection with the contract; and that sanctions will apply when violations occur. These sanctions range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, to blacklisting for future contracts on the side of the bidders, and criminal or disciplinary action against employees of the government. The IP allows companies to refrain from bribing in the knowledge that their competitors are bound by the same rules. It allows governments to reduce the high cost of corruption on procurement, privatization and licensing.

Beyond the individual contract in question, the IP is also intended to create confidence and trust in the public decision making process in general, a more

hospitable investment climate and public support for the government's own procurement, privatization and licensing programs. The IP concept is suitable not just for construction and supply contracts, but equally for the selection of , (engineering, architectural or other consultants, oil or gas exploration or production, mining, fishing, logging or other extraction rights), or for government-regulated services (such as telecommunications, water supply or garbage collection services).

The IP can be applied to the full range of activities concerning a particular investment, sale, license or concession , beginning with the feasibility and preparatory stage (Even the preparation of the earliest alternative choice and design documents should be covered – if not, a dishonest consultant can misdirect the entire preparation process for the benefit of certain contractors or suppliers), selection of the main contractors/suppliers/licensees and extending to the implementation of the main activity

Essential features of Integrity Pact- The essential elements of the Integrity pact

are:

- _ a contract between a government office inviting public tenders for any type of contracts related to goods and services (the principal) and the bidders.
- _ an undertaking by the principal that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary or criminal sanctions in case of violation;
- _ a statement by each bidder that it has not paid, and will not pay, any bribes "in order to obtain or retain this contract"

_ an undertaking by each bidder to disclose all payments made in connection with the contract in question to anybody (including agents and other middlemen as well as family members etc.)

_ the explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation as well as the corresponding sanctions remain in force for the winning bidder until the contract has been fully executed;

_ bidders are advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behavior) and a Compliance Program for the implementation of the Code of Conduct throughout the company;

_ the use of arbitration as conflict resolution mechanism and the instance to impose sanctions. A pre-announced set of sanctions for any violation by a bidder of its commitments or undertakings, includes -

- denial or loss of contract,
- forfeiture of the bid security and performance bond,
- liability for damages to the principal and the competing bidders, and
- debarment of the violator by the principal for an appropriate period of time.

A maximum of transparency, all along the various steps, leading to the Contract and throughout its implementation is the basis for the successful design, setup and implementation of an IP.

Role for independent monitors- For proper exploitation of full potential of the IP it is essential that that civil society in the respective country would play a key role in overseeing and monitoring the correct and full implementation of the IP.

The civil society is manifest in most of the countries in the form of NGOs or individuals of eminence in the society who have worked in the rendered distinguished services in the field of law, public administration, education etc. and who are expected to remain independent of any external pressure that may be brought about either from the side of the Government or the bidder. In order to ensure such an oversight in the field of transparency such monitors have to be permitted free access to all the stages of entire procedure of contract negotiation as well as execution. However, While doing the scrutiny, the independent monitor is expected to ensure that legitimate intellectual property (i.e. propriety information designs, patents etc.) of both the parties are protected adequately through an appropriate contractual stipulation. Hence the independent monitor is not expected to ask details like design parameters of a product which is the patent of the company. Similarly while scrutinizing a defence contract, the independent monitor is not supposed to ask for or divulge in public, defence secrets like deployment plans of an equipment. However within these parameters the independent monitor has a very high degree of independence and can objectively scrutinize a contract negotiation and execution record from the point of view of establishing the transparency of the deal.

Integrity Pact in India- The application of integrity pact was for the first time done by Oil and Natural Gas Commission (ONGC) in the year 2005. Thereafter the major decision to implement Integrity Pact at the Ministerial Level was taken for the first time by Ministry of Defence through ' Defence Procurement Procedure (DPP 2006) ' implemented from 1st September 2006. In the following year i.e in

2007 several Public Sector undertakings decided to implement the Integrity Pact namely Air India , Power Grid Corporation Ltd , Steel Authority of India Ltd. (SAIL) , Coal India Ltd. (CIL) and Gas Authority of India Ltd. (GAIL).

CVC vide their office order no 4/12/07 dated 4th December 2007 have now recommended adoption of integrity pact concept for all major government procurements so as to ensure transparency in all major contracts. CVC vide their above-mentioned office order have enclosed the format of integrity pact which was prepared by SAIL and vetted by the Additional Solicitor General as a guiding document. The copy of the abovementioned office order of CVC and the format of Integrity Pact proposed by SAIL is placed at Annexure I while the format of integrity pact contained in the Defence Procurement Procedure 2006 is placed at Annexure II .

Close examination of the two versions of integrity pact format reveals that while the two formats broadly cover the essential features of IP as envisaged by Transparency International (TI) , there are some essential differences in details which are tabulated below for comparison

(relevant clause of the IP given in parenthesis)

S.N.	Description	SAIL	MOD
1	Preamble / objective	While stating that 'ensuring transparency is the main objective of the Principals' , the appointment of Independent External Monitors (IEM) has been stated in the preamble as as a main objective	Objective is stated to be to avoid all forms of corruption by following a system that is fair, transparent and free from any influence / unprejudiced dealing(para 3. 3.1 and 3.2)
2.	Nature of action by the principle in case of	If the Principal receives an information	In case of any misconduct on the

	receiving information about the misconduct of its officials	regarding conduct of any of its officials which is criminal offence under IPC/ PC(Indian Penal Code/ Prevention of Corruption Act) or if there is substantive suspicion in this regard , the Principle will inform Chief Vigilance officer and in addition can initiate disciplinary action. (Section 1 (2))	part of official(s)(of the Principle) is reported by the Bidder to the Buyer with full and verifiable facts and if the same is <i>prima facie</i> found to be correct , necessary disciplinary proceedings or any other action as deemed fit, including criminal proceedings may be initiated by the Buyer and such a person shall be debarred from further dealings related to the contract process(Para 5)
3	Compensation for damage	If the Principle has disqualified the bidder from the tender process in connection with any transgression for IP , he is entitled for damages equivalent to Earnest Money Deposit / Bid Security . If the contract has already been entered into, the Principle shall be entitled to damages equivalent to Performance Bank Guarantee. (section 4)	In case of violation, the Principle is entitled to recover Earnest Money/ Security deposit in case of violations noticed when tender process is on. However , in case contract has already been awarded, the Principle shall be authorized to encash advance bank guarantee and performance bond, warranty bond . In addition interest on sum already paid as specified also to be recovered. (para 10.1 (ii , iv and v)
4.	Provision for information regarding agents	The bidders / contractors of foreign origin shall disclose the	The bidder has to declare that he is the original equipment

	Appointment / Powers of Independent Monitor	name and address of agents/ representatives in India The bidder shall while presenting the bid disclose any payment he has made / intends to make to brokers , agents or any other intermediaries in connection with the award of the contract. (section 2 (d) & (e))	manufacturer / integrator/ authorized government sponsored export entity and has not engaged any individual or firm of Indian or foreign origin to facilitate the contract nor any amount has been paid to / promised or intended to be paid to any such individual/ firm or company in connection with the contract. (Para 6.5)
5.	Company code of conduct	-	Bidders are advised to have a company code of conduct (clearly rejecting the use of bribe and other unethical behavior) and a compliance program for implementation(Para 9.1) should be enclosed
6	Examination of Books of Accounts	-	In case of any allegation of violation of any provision of IP or payment of commission , the buyer or its agencies shall be entitled to examine the Books of Account of the bidder and the bidder shall provide necessary information of relevant financial documents for the purpose of such examination(para

			13)
7	Appointment / Powers of Independent Monitors	<p>(i) The monitor will have right to access without restrictions to all project documentation of the Principle including that provided by the bidder. The contractor will also grant right of unrestricted and unconditional access to the project documentation. The monitor shall treat such information as confidential</p> <p>(ii) The monitor shall submit his unbinding recommendation to the Principle for taking corrective action in case of any problem.</p> <p>(iii) The Monitor can also submit the report to Central Vigilance Commission directly if he notices and reports a violation under IPC / PC and where no action is taken by the Chairman SAIL within reasonable time (section 8)</p>	<p>The appointment of Independent Monitors is indicated but their powers have not been indicated in details. (para 12) .These powers have been separately notified by MoD .</p>
8	Fall clause	-	<p>The bidder declares that he has not supplied / is not supplying similar system or sub – system at price lower than that offered in the concerned bid to any other Ministry / Department of Govt. of India. If it is found that any such</p>

			system/ sub- system has been supplied at a lower price to any other ministry / department of Govt. of India than that price with due allowance for elapsed time (escalation for inflation) will be applicable for the concerned bid also.
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The integrity pacts finalized by the two bodies while being essentially same in intent have minor but significant differences as mentioned above . The significance of these subtle differences can be possibly explained as under-

Preamble- The emphasis in the preamble of SAIL document on Independent External Monitors is also reflected in the body of its draft as explained in S.N. 7 . On the other hand MoD document lays greater stress on transparent practices and avoiding unethical behavior in the opening para.

Nature of action by the principle in case of receiving information about the misconduct of its officials – While SAIL document hints at informing CVO about such misconduct and also possibility of disciplinary proceeding, MoD draft indicates that disciplinary proceedings including criminal proceedings can be initiated against the officials if information is prima facie correct. Hence its provisions appears more drastic indicating harsher action on corrupt employees.

Compensation for damage - Draft issued by MoD makes an additional provision of recovering interest also on advance paid in case of concluded contracts in case of violation. This is additional to forfeiture of Earnest Money/

Performance Bond Guarantee available in both the documents. This offers an opportunity for even harsher penalty to the bidder.

Provision for information regarding agents - Here we find a major difference which essentially stems from the fact that while SAIL permits appointment of Agents for the foreign bidders, this is not permitted by MoD. Hence SAIL format merely seeks information on names, addresses and payments made to the agents while MoD format obtains a declaration from the bidder that he has not appointed any agent/ intermediary nor made / promised to make any payment to a third person. It is of relevance to note that the provision stems from the earlier experience of MoD in dealing with agents in defence deals which prompted it to discontinue with allowing them to operate in India.

Company code of conduct MoD draft makes an additional provision by advising bidders to evolve and implement a company code of conduct which forbids use of bribe or any unethical practice for obtaining/ implementing a contract. This additional feature in MoD draft goes a step further and makes clear, its intention of dealing only with companies which believe in ethical business practices.

Examination of Books of Accounts Through this clause MoD has sought an extra assurance from the bidders that in case of any complaint they will permit examination of Books of Accounts. This stems from the fact that in cases of charges of bribes / unauthorized payments to agents, it becomes almost impossible to establish the charges as Arms manufacturers are in foreign

countries where our law enforcing agencies cannot access their books of Accounts. This feature is missing in SAIL format.

Appointment / Powers of Independent Monitors As mentioned in the preamble, the Powers and functions of independent external monitors(IEM) have been elaborated in greater details in SAIL document. AS already stated , IEM is an independent functionary and his roles and functions are different from that of the Government . He acts like a watch dog and is not expected to show any favor to either . In addition SAIL document permits unrestricted access to IEM to various project related matters while this right has been retained by the Government in case of MoD . This means that in case of SAIL even if , Government obtains certain facts about misconduct, it still may not be able to proceed with legal action as it may or may not get the access to requisite information which is only limited to IEMs who are to keep it confidential. If any incident of misconduct occurs , SAIL may have to make additional efforts to secure information from the bidder, like information regarding payments made to unauthorized entities , before it can initiate criminal proceedings under IPC or PC in the court of law . MoD draft is mostly silent on certain aspect of IEM like their jurisdictions etc. and these provisions have been separately notified.

Fall Clause- Fall clause has been included by MoD in IP to safeguard against cases where the bidder gives a certain stores at lower price to another Government department/ ministry to the detriment of financial interest of the Government . Although this is strictly speaking not a part of transparency issue , however it has been built in as Government has faced cases in the past where

after supplying certain item at a reasonable price to a Government Department, the supplier hiked the price while offering the same item to another department . If another department placed order on the same firm at higher prices then that resulted in loss to the exchequer and serious vigilance complaints . In such a situation, government had no right to cancel the order even if it knew that it was forced to buy at a higher price. Fall clause is an additional safeguard against such situations. SAIL document is silent on this .

Having examined the basics of integrity pact and after also observing the drafts prepared by two government agencies one by a PSU and another by a Ministry , we conclude this chapter by stating that in spite of the concept of IP being around for some time , it is only in last one year that adoption of IP in Government has gained momentum and its potential is still to be fully unfolded

CHAPTER VII

IMPLICATIONS OF INTEGRITY PACT

After examining the status of implementation of Integrity Pact in the Government Contracts and perusal of the formats adopted by a Public Sector Undertaking (SAIL) as well a major Ministry (MoD) , we shall examine the implications of various clauses of integrity pacts and its implications for both the buyer (Government) as well as the bidder. The chapter will be concluded by examining the strengths and weaknesses of the IP concept

As stated in the previous chapter, the IP formats of SAIL as well as MoD as more or less on same lines with specific differences indicated separately . As the MoD format is comparatively more elaborate except for the reference to Independent External Monitors where SAIL format gives more details , unless otherwise stated, we shall keep the discussion focused on Mod format .

Objective(para 3) The implications of agreeing on the objective of eliminating all forms of corruption both by the Buyer as well as the supplier are significant. Government's binding declaration to the Suppliers all around the world , on its intent to avoid corruption and adopt a system that is fair transparent and free from any influence / prejudicial dealing prior to , during and subsequent to the currency of the contract to be entered into, is a significant confidence building measure. Hence all the genuine suppliers who may be feel uncomfortable with a corrupt system due to different set of corporate culture in their respective countries, may now participate in the bidding process with an assurance that they will be allowed to compete in fair manner. This encourages greater

competition and better costs to the Government while permitting technologically best systems to be bought. A similar legally binding declaration by the supplier is also important as only a genuine bidder confident of offering required systems at competitive prices, with commitment to adhere to ethical business practices, will come forward to participate in the competitive bidding process, thus keeping Agents/ 'fly by night' operators at bay.

However the more important feature of this declaration by both parties is that this is given in a legally binding form (In the form of an agreement on stamp paper enforceable in the court of law) at the stage when supply order contract is yet to be decided and when the bids have just been called through tendering process. While earlier the tender documents merely warned the bidder not to adopt any unfair practices, there was precious little which the buyer could do in terms of legal proceedings against the bidder in case, it was found out that he had indulged or was intending to indulge in practices such as paying bribe. However now the bidder faces risk of legal proceeding in case of violation.

The fact that these provisions are applicable on all bidders who have to sign the pact, is an additional assurance for level playing field for all genuine corporate groups and increases transparency in the entire process of government procurement.

Commitment of the Buyer(para 4 & 5) - Apart from the declaration that buyer's officials will not indulge in any corrupt practice, it also assures the bidders that all bidders will be treated alike and same information will be provided to all. In the past cases have occurred where during the bidding process some bidders

were selectively provided with important information that resulted in undue advantage to the favoured bidders, thus vitiating the process.

The provisions of para 4.3 of the Integrity Pact permit the bidder to make complaint to the buyer or the IEM, any misconduct by the officials of the buyer (like seeking bribe, showing favor to a particular bidder etc as mentioned in 4.1 & 4.2). In such case, the Government (Buyer) commits to take disciplinary or other action as deemed fit and also debar the particular official from dealing with this case. This is a very potent weapon in the hands of the bidders against unreasonable demands by the Government officials.

Commitment of the bidder- (para 6.1 to 6.9) –Apart from the already described declaration on commitment to avoid use of unethical means, this clause (para 6.3) also extracts commitment from the bidder that he shall not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. This clause should be seen in the light of the fact that in past many cases of cartel formation by the private business houses amongst themselves occurred which resulted in undermining the tendering process. Cartel formation in international oil market is a well documented fact. In the Government bidding, cartel formation may happen on a smaller scale where two or three contractors get together and artificially jack up the price collectively, vitiating the fair competition and denying best price to the government. Para 6.3 of IP is a safeguard against such possibilities and legally binds suppliers from forming cartels.

Provision regarding complaints of misconduct by the officials of the buyer have already been described above. However in order to ensure that this provision is not invoked unnecessarily by the bidder, thus triggering false alarms and also to prevent the harassment of upright officials, a clause has been inserted (para 6.8) whereby the bidder commits not to make complaints directly or indirectly without supporting it with full and verifiable facts.

Previous Transgressions(para 7) - The bidder is required to declare that he has not used corrupt practices in the previous three years while dealing with any Public Sector enterprise or Government Department in India. This clause has major implications as it eliminates the entry of firms that have the history of using unethical practices in dealing with the Government/ Public Sectors. In case a company makes a false declaration just in order to qualify for a bid and if during scrutiny it is found to have indulged in an unethical practice, then it risks losing earnest money apart from being disqualified.

Earnest Money Deposit(EMD)(para 8) – EMD is a financial arrangement which has to be fulfilled by each interested bidder who submits a bid. This is in terms of a bank guarantee (or deposit of equivalent amount) with the buyer which is retained by the buyer as long as the tender proceedings are not concluded. This deposit can be claimed by the buyer if the bidder prematurely withdraws his bid (which he could do in case of cartel formation) or proves to be a non serious player. As soon as the proceedings are concluded satisfactorily and the Government places firm order on a particular supplier, EMD is returned to all bidders. However this provision was earlier not existing in Ministry of

Defence tenders due to peculiarity of Defence equipment purchases which are governed by various geopolitical considerations and subject to arms control regime. However with the introduction of Defence Procurement Procedure 2006, this requirement has been introduced in defence tenders also, mainly as a safeguard for Integrity Pact. The signing of IP is now accompanied by EMD. Since the bidder has committed his money in the form of a guarantee, it is ensured that the bidder remains seriously committed in adhering to provisions of IP. In case he is not, Government has option to claim his EMD. This is an additional safeguard to ensure proper implementation of IP in letter and spirit.

Sanction for violations(para 10) – Both the parties agree for certain well defined set of sanctions that can be imposed by the buyer (Government) in case of violation on the bidder. This clause gives teeth to the concept of Integrity pact since action taken earlier, in the absence of a mutually agreed upon and legally binding set of agreement, permitted the bidders to get away with any tangible action in the court of law. However this clause only talks about the sanctions on the bidder while omitting similar provisions for sanctions against buyer in case of violation. This aspect of limitation of IP shall be dealt with in the later part of this chapter while discussing the limitations of IP.

Independent External Monitor- Independent External Monitor is a person of distinguished background in the field of law, public administration or education, who is not under the Administrative control of either of the parties but is conferred with powers to act as a watch dog so far as implementation of provisions of Integrity pact is concerned. Thus his role is like that of a Referee. It

has been decided by the CVC that IEM would be appointed with the approval of the CVC which will ensure that persons of high integrity and experience are appointed to this position . IEM has the powers to report the matter directly to the Head of the respective organization, CVOs as well as to the CVC which makes the process of oversight highly transparent and free from any influence by the interested parties i.e either the Government or the bidder.

Examination of Books of Accounts- By inserting the clause , the Government have obtained a right to examine the Books of Account of the bidder in case of any reported violation of the IP provisions. This is a very important aspect as earlier due to lack of any jurisdiction or legally binding agreement between the two parties , the investigating agencies like CBI faced a lot of difficulty in collecting evidence against the violations or allegations of bribes etc. which could only be collected by examining the financial transactions carried out by the bidder and are generally reflected in his books of Accounts. This provision will now enable investigating agencies to collect firm evidence and proceed against the wrong doers in case of allegations of adoption of unethical business practices by the bidders.

Additional Details in SAIL format- Additional details in SAIL format concern two aspects-

Disclosure of name, address and payments made to the agents- Since the SAIL procedure permits appointment of agents by the foreign bidders SAIL format of IP does not specifically debar gents from being involved in the entire process . However it seeks complete information regarding them so that Government can

remain aware of this fact and be watchful of any violations, if any, by agents on behalf of the bidders which are otherwise difficult to monitor if the agent keeps his identity obscure

Independent External Monitor(Section 8) – The SAIL format has described in details the role and functions of IEM.

Limitations of Integrity Pact- The important features of IP, which make it a very potent tool for adoption, have already been described earlier. However like every tool, IP also has its limitations. It would be simplistic to assume that the age old problem of corruption, which has been in existence for centuries would vanish with this one magical wand. Since the adoption of IP has been done only recently in last two years in India, its impact is yet to be fully assessed. A typical procurement cycle in India for a major project like procurement of Tanks, Naval ships, aircrafts or equipment for steel rolling mill take anywhere from three to five years or even more from the date of floating of tender till the completion of deliveries. The complaints of unethical trade practices usually surface only after the deliverers have been completed and its performance fully assessed. Thus the procurement cases for which IP have been signed in last one year or so shall fructify over next two-four years and ideally that will be the right time to make proper assessment. However ONGC has already reported that the number of procurement procedure related complaints has come down after adoption of IP.

However purely based on the present text of IP , certain shortcomings/ limitations which may be identified are listed below-

Penalties on the bidder/ buyer for violation- The integrity Pact lists down the responsibilities of the Buyer as well as the bidder (or seller) in a very comprehensive manner , in so far as ethical business practices before and after awarding of a contract are concerned . It also requires the bidder to submit Earnest Money Deposit (EMD) as a security and the buyer has the right to impose a plethora of penalties in case of any violation or adoption of unethical practices by the buyer which have been prohibited in the IP / IPC/(Indian Penal Code)/ Prevention of Corruption Act (PC) which include financial penalties like forfeiture of EMD / Performance Guarantee bond etc. However similar provision of penalties on the buyer in case of violation of the terms of IP have not been provided for . There are certain clauses which assure of action against the officials who are found guilty of misconduct and these too are highly conditional like action being initiated only if verifiable facts are made available to the Government which is indeed a difficult task for a business firm , however bidder as a whole cannot hope for compensation for damages which could happen to it in case of misconduct by the buyer or its officials. Hence the IP is one sided in favor of the buyer in this regard.

Powers to decide on Violation- Para 10.2 of the MoD draft states as under-

' The decision of the buyer to the effect that a breach of provisions of the Integrity Pact has been committed by the bidder shall be final and binding on the bidder . However the bidder can approach the monitors for the purpose of this pact. '

Implications of this clause from the point of view of the bidder are enormous. While it is our general hypothesis that professional companies do not disagree on the need to ensure transparency in the bidding process and would even be ready to face penalty in case of any transgression, what they may object to is the fact that decision on violations solely vests with buyer as defined in the IP. Furthermore there is not even a provision of any third party redressal mechanism, which makes the pact heavily tilted in favor of the buyer. Any pact or agreement is done between two equal partners where rights and responsibilities of both the parties in terms of redressal mechanism are same or similar. In standard supply contracts, redressal is provided by means of appointment of arbitrators who are independent entities under the provisions of 'Indian Arbitration Act' or subject to terms set of International Chambers of Commerce, Paris and in front of the arbitrator, both buyer as well as seller have equal standing. The decision of the arbitrators is binding on both buyer as well as bidder. Since IP is also just like any other commercial agreement, perhaps some bidders may demand at some point of time similar equitable mechanism for redressal. In the present formulation the Pact confers greater powers on buyer than on the bidder.

Limited application against grand corruption- It has already been stated that it is not possible at this stage to draw any firm conclusions regarding effectiveness of IP as a tool to curb corruption. However it may be safe to predict that IP shall be useful in putting a check on petty corruption where certain officials tamper with the system for personal gains. It is expected that in such a case a bidder

who is affected by such a misdeed or IEM who is independent of the bureaucratic control, shall take note of the same and report to CVC. However if the corruption takes a grand form where each and every involved entity including the bureaucracy, the firms, the IEMs etc., and the political masters join hands together to share the spoils, then the IP may not be of any use. While such form of corruption has been reported in certain despotic countries, the occurrence of such an event in India appears remote, as long as the democratic institutions remain strong. Here, it would be adequate to conclude that effectiveness of IP, as a tool for ensuring transparency, in case of grand corruption may be limited.

Implementation for major tenders only- The integrity pact in its present form has been applicable in Ministry of Defence for tenders valued at Rs 100 Crs or more whereas propensity for corruption is equally strong in smaller value tenders. It would be imperative to extend this concept for smaller value tenders in graduated manner. One may expect that initially the Government would like to try out the concept for limited number of high value tenders and once found effective this concept may be extended to larger number of contract and tenders also.

We conclude this chapter by stating that like any tool IP also has its strengths and weaknesses. The effort by the Government should be to capitalize on strength and improve upon the weaknesses.

CHAPTER VIII

CONCLUSION

Government in many countries have fallen because of procurement scandals which involved bribes paid by manufacturers or service providers either to individual in the service of the state or to political parties. Other, lesser cases, litter the press daily. Most of the Government procurements at best are looked down upon with a degree of mistrust by the common man even when there is no evidence of any malpractice. Media, for whom a bad news is a good news and good news is no news, also feeds on scandals and would, for some reason or the other, like to 'cry wolf' every time it reports government's deeds. If out of several hundred thousand government contracts which are concluded scrupulously, even if one deal turns out to be vitiated, it is bound to create impression that nothing is right with the Government purchases and every official is tainted.

However to be fair to media, it is the duty of the officials to meet the expectation of the common man that the Government ought to do no wrong. With this purpose several measures have been taken from time to time to ensure transparency. The most widespread method is the public, competitive, tender for the purchases of goods and services. Public competitive bidding is not corruption-proof: many times officials and bidders collude and conspire to award the contract against bribes and other, non-cash, benefits. But we still know of no better way to minimize the effects of human greed. So in order to keep a check on Procurement policies, procedures and tenders are supervised by state

auditing authorities. Then there are several other arms within and outside the Government like Parliamentary Committees, Central Vigilance Commission, free and independent media and independent Judiciary which act as watchdogs against corruption. Still the problem exists, and surprisingly in almost all parts of the world.

Integrity Pact, a legally binding tool developed by Transparency International is an additional weapon in the hands of Government to check corruption. The skeptics may be right in observing that the Integrity Pact, about which some of its advocates appear so excited, may just turn out to be another dumb squib, like so many other measures which have been introduced in the past but failed to check this menace.

To be honest, such reservations may come true. In spite of all the nice things that have been said about IP, it is to be recognized that it is mere tool which is available to the Government and its officials, if they wish to make use of it. Mere incorporation of a weapon in one's armory does not necessarily mean this he shall be able to make use of it too. With the third largest pool of scientist, India has not been able to pull out a one third of our populace out of shackles of poverty. We may be the IT superpower, but even today it takes months for information to reach remote villages.

So all one can say is that what is needed most is fundamental change in our outlook towards ethics and how we value honesty. Father of the Nation, Mahatma Gandhi had said that there is enough on the earth as per our needs but not enough for our greeds. As long as the greed factor is not reigned in, the

results of the new measures could get nullified . But if there is honesty in approach at least on behalf of the ' Steel frame of India' , i.e our bureaucracy ,on whom the maximum responsibility lies for introducing a new set of value systems to our nation and restore the confidence of the common man , the results of introducing the new measure could be far reaching .

There is enough evidence from across the world to show that the introduction of IP has resulted in substantial savings to the nation. Integrity Pacts, in a more complete version have been used and are currently being used in Argentina (City of Moron), Colombia (several), Ecuador, the cities of Bergamo, Genoa and Milano in Italy (municipal contracting in general), in Seoul/Korea and in Pakistan. Essential elements of the IP are being used in other applications elsewhere, among them, the municipality of Bhaktapur/Nepal, in Panama and in the municipality of Avellaneda/Argentina. The global overview of experience indicates that the IP concept is sound and workable. One of the strengths of the concept seems to be that it is flexible enough to adapt to the many local legal structures and requirements as well as to the different degrees in which governments are willing to proceed along the lines set forth here. Nevertheless , these lines contain the essentials that must appear in an IP in order to be designated as such and supported by TI.

Savings. For example, the tender process for the technological turnaround of the -Banco Agrario- in Colombia during the first semester of 2002, finished with an awarding price 30% below the budgeted price, in part, due to the introduction of an Integrity pact. Also, important savings were observed between 2001 and 2002

in Pakistan, when the Karachi Water and Sewerage Board (KW&SB) included the application of the IP concept in the contracting process for consultants for its K-II Greater Karachi Water Supply Scheme.

Trust. As quoted in the report of TI , during a case evaluation exercise, some bidders who participated in processes, where the IP had been used mentioned that they might be unhappy that they lost, but they knew, they lost fairly. This element is also very important. It can save unnecessary judicial claims, and create trust in Government action.

Sanctions. Transparency International reported that In some countries, companies have been blacklisted for violating the Pact i.e . Italy and Korea .

Faster Tendering process- This is a logical fallout of attribute mentioned at above. It has been reported by the ONGC that after adoption of Integrity Pact in its tenders , the number of complaints from involved firms have considerably reduced. If this happens , the entire process is speeded up as in the past investigation into the complaints wasted considerable time which in turn resulted from lack of trust.

We conclude this study by stating that it may not be correct to assume that adoption of Integrity Pact will eradicate the problem of corruption which has been known to the man kind since ancient times. However it does provide a hope to the average common bidder, buyer as well as to the civilian society and the common tax - payers at large that in general the intention of government will be directed at avoiding adoption of unethical practices. In between if some member (s) of the bidder or the buyer try to take recourse to any unethical action

, then adequate legal provisions will be available with the other party to impose sanction. In addition, civil society will also have a role to play in the oversight mechanism on ensuring transparency . This in turn will be an additional check on the entire gamut of public procurement.

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5. Transparency International Report- Corruption Perceptions Index 2007

6. World Wide Governance Indicators - Tools for Good Governance of Misinformation - Kazi Iqbal and Anwar Shah

7. Lockheed I Scandal- Wikileaks

8. Transparency International - 2007 - 2008 - 2009

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10. CVC guidelines on integrity Pact dated 4th December 2007

11. Manual of Policies and Procedures for Purchase of Goods issued by Ministry of Finance, Department of Expenditure in 2000

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4. Aggregate and Individual Governance Indicators- 1996-2006- Daniel Kaufmann , Aart Kraay , Massimo Mastruzii
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10. CVC guidelines on Integrity Pact dated 4th December 2007.
11. Manual of Policies and Procedures for Purchase of Goods issued by Ministry of Finance, Department of Expenditure in 2006.

No.007/VGL/033
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block-A
GPO complex, INA,
New Delhi-110023
Dated the 4th December 2007

Office Order No.41/12/07

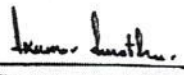
Subject: Adoption of Integrity Pact in major Government Procurement Activities- regarding.

Ensuring transparency, equity and competitiveness in public procurement has been a major concern of the Central Vigilance Commission and various steps have been taken by it to bring this about. Leveraging technology specially wider use of the web-sites for disseminating information on tenders, tightly defining the pre-qualification criteria and other terms and conditions of the tender are some of the steps recently taken at the instance of the Commission in order to bring about greater transparency and competition in the procurement/award of tender.

2. In this context, Integrity Pact, a vigilance tool first promoted by the Transparency International, has been found to be useful. The Pact essentially envisages an agreement between the prospective vendors/bidders and the buyer committing the persons/officials of both the parties, not to exercise any corrupt influence on any aspect of the contract. Only those vendors/bidders who have entered into such an Integrity Pact with the buyer would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification. The Integrity Pact in respect of a particular contract would be effective from the stage of invitation of bids till the complete execution of the contract.
3. The Integrity Pact envisages a panel of Independent External Monitors (IEMs) approved for the organization. The IEM is to review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. He has right of access to all project documentation. The Monitor may examine any complaint received by him and submit a report to the Chief Executive of the organization, at the earliest. He may also submit a report directly to the CVO and the Commission, in case of suspicion of serious irregularities attracting the provisions of the PC Act. However, even though a contract may be covered by an Integrity Pact, the Central Vigilance Commission may, at its discretion, have any complaint received by it relating to such a contract, investigated.
4. The Commission would recommend the Integrity Pact concept and encourage its adoption and implementation in respect of all major procurements of the Govt. organizations. As it is necessary that the Monitors appointed should be of high integrity and reputation, it has been decided that the Commission would approve the names of the persons to be included in the panel. The Government Organizations are, therefore, required to submit a panel of names of eminent

persons of high integrity and repute and experience in the relevant field, through their administrative Ministry, for consideration and approval by the Commission as Independent External Monitors. The terms and conditions including the remuneration payable to the Monitors need not be a part of the Integrity Pact and the same could be separately communicated. It has also to be ensured by an appropriate provision in the contract, that the Integrity Pact is deemed as part of the contract in order to ensure that the parties are bound by the recommendation of the IEMs, in case any complaint relating to the contract, is found substantiated.

5. A copy of the Integrity Pact, which the SAIL got vetted by the Addl. Solicitor General is available on the Commission's web-site i.e www.cvc.nic.in as an attachment to this Office Order in downloadable form, which may be used in original or may be suitably modified in order to meet the individual organization's requirements.


4/12/2007 (Vineet Mathur)
Deputy Secretary

- All Secretaries to the Govt. of India
- All CMDs of PSUs
- All CMDs of PSBs
- All CVOs

compliance with all relevant laws of the land, including the use of resources and of fairness / transparency in dealing with Bidder(s) and / or Contractor(s).

above.

Principles of Integrity Pact

(1) The Principal undertakes to take all measures necessary to prevent corruption and to observe the following principles:

- a. No employee or the officials, presently or those in future, will be connected with the tendering process of the contract, awarded, save a person who is a member of third person, who is not a member of the tendering process or who is not legally authorized.
- b. The Principal will, during the tender process, treat all Bidders with equity and fairness. The Principal will in particular, before and during the tender process, refrain from disclosing the price information and will not attempt to use Bidders' confidential / additional transaction information for the tender process, which is an advantage in relation to the tender process or the contract execution.
- c. The Principal will ensure that all necessary steps are taken to



SAIL



INTEGRITY PACT

Between

Steel Authority of India Limited (SAIL) hereinafter referred to as "**The Principal**",

and

..... hereinafter referred to as "**The Bidder/
Contractor**"

Preamble

The Principal intends to award, under laid down organizational procedures, contract/s for.....The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness / transparency in its relations with its Bidder(s) and / or Contractor(s).

In order to achieve these goals, the Principal will appoint an Independent External Monitor (IEM) , who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 - Commitments of the Principal

(1.) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-

- a. No employee of the Principal, personally or through family members, will in connection with the tender for , or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
- b. The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
- c. The Principal will exclude from the process all known prejudiced persons.



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- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

Section 2 - Commitments of the Bidder(s)/ contractor(s)

- (1) The Bidder(s)/ Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
- a. The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
 - b. The Bidder(s)/ Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the bidding process.
 - c. The Bidder(s)/ Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s)/ Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - d. The Bidder(s)/Contractors(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly the Bidder(s)/Contractors(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is annexed and marked as Annex-



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- e. The Bidder(s)/ Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- (2) The Bidder(s)/ Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3- Disqualification from tender process and exclusion from future contracts.

If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings". Copy of the "Guidelines on Banning of business dealings" is annexed and marked as Annex-"B".

Section 4 - Compensation for Damages

- (1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

Section 5 - Previous transgression

- (1) The Bidder declares that no previous transgressions occurred in the last 3 years with any other Company in any country conforming to the anti corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in "Guidelines on Banning of business dealings".



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Section 6 - Equal treatment of all Bidders / Contractors / Subcontractors

- (1) The Bidder(s)/ Contractor(s) undertake(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders, Contractors and Subcontractors.
- (3) The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7 - Criminal charges against violating Bidder(s) / Contractor(s) / Subcontractor(s)

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

Section 8 - Independent External Monitor / Monitors

- (1) The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Chairman, SAIL.
- (3) The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s)/ Subcontractor(s) with confidentiality.

- (4) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- (5) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (6) The Monitor will submit a written report to the Chairman, SAIL within 8 to 10 weeks from the date of reference or intimation to him by the *Principal* and, should the occasion arise, submit proposals for correcting problematic situations.
- (7) Monitor shall be entitled to compensation on the same terms as being extended to / provided to Independent Directors on the SAIL Board.
- (8) If the Monitor has reported to the Chairman SAIL, a substantiated suspicion of an offence under relevant IPC/ PC Act, and the Chairman SAIL has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- (9) The word '**Monitor**' would include both singular and plural.

Section 9 - Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders 6 months after the contract has been awarded.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged / determined by Chairman of SAIL.

Section 10 - Other provisions

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi.
- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

(For & On behalf of the Principal)

(For & On behalf of Bidder/ Contractor)

(Office Seal)

(Office Seal)

Place -----

Date -----

Witness 1 :

(Name & Address)

Witness 2 :

(Name & Address)

No.007/VGL/033
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block-A
GPO complex, INA,
New Delhi-110023
Dated the 28th December 2007

Office Order No.43/12/07

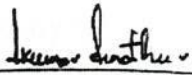
Subject: Adoption of Integrity Pact in major Government Procurement Activities- regarding.

Reference is invited to Commission's office order no. 41/12/2007 circulated vide letter of even no. dated 4/12/2007 on the aforementioned subject.

2. The Commission vide para 4 of the aforementioned office order had directed that the organizations were required to forward a panel of names of the eminent persons of high integrity through their administrative ministries for consideration and approval by the Commission as IEMs.

3. The matter has been reconsidered by the Commission and in order to simplify the procedure and avoid delay, it has been decided that the organizations may forward the panel of names of eminent persons for appointment and consideration as IEMs directly to the Commission for approval.

4. Para 4 of the Commission's circular cited above stands amended to this extent.


28/12/2007 (Vineet Mathur)
Deputy Secretary

All Chief Vigilance officers

Annexure I to Appendix H of
Schedule I

(Refers to Para 18 (j))

PRE-CONTRACT INTEGRITY PACT

General

1. Whereas the PRESIDENT OF INDIA, represented by Joint Secretary & Acquisition Manager (Land/Air/Maritime Systems), Ministry of Defence, Government of India, hereinafter referred to as the Buyer and the first party, proposes to procure (Name of the Equipment), hereinafter referred to as Defence Stores, and M/s

_____, represented by,
_____ Chief Executive Officer (which term, unless expressly indicated by the contract, shall be deemed to include its successors and its assignees), hereinafter referred to as the Bidder/Seller and the second party, is willing to offer/has offered the stores.

2. Whereas the Bidder is a private company/public company/partnership/ registered export agency, constituted in accordance with the relevant law in the matter and the Buyer is a Ministry of the Government of India performing its functions on behalf of the President of India.

Objectives

3. Now, therefore, the Buyer and the Bidder agree to enter into this pre-contract agreement, hereinafter referred to as Integrity Pact, to avoid all forms of corruption by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

3.1 Enabling the Buyer to obtain the desired defence stores at a competitive price in conformity with the defined specifications of the Services by avoiding the high cost and the distortionary impact of corruption on public procurement, and

3.2 Enabling bidders to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices and the Buyer will commit to prevent corruption, in any form, by their officials by following transparent procedures.

Commitments of the Buyer

4. The Buyer Commits itself to the following:-

4.1 The Buyer undertakes that no official of the Buyer, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or 98

through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the Contract.

4.2 The Buyer will, during the pre-contract stage, treat all Bidders alike, and will provide to all Bidders the same information and will not provide any such information to any particular Bidder which could afford an advantage to that particular Bidder in comparison to other Bidders.

4.3 All the officials of the Buyer will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.

5. In case of any such preceding misconduct on the part of such official(s) is reported by the Bidder to the Buyer with full and verifiable facts and the same is *prima facie* found to be correct by the Buyer, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Buyer and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the Buyer the proceedings under the contract would not be stalled.

Commitments of Bidders

6. The Bidder commits himself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his bid or during any precontract

or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commits himself to the following:-

6.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.

6.2 The Bidder further undertakes that he has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Government.

6.3 The Bidder will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.

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6.4 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.

6.5 The Bidder further confirms and declares to the Buyer that the Bidder is the original manufacturer/integrator/authorised government sponsored export entity of the defence stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Buyer or any of its functionaries, whether officially or unofficially to the award of the contract to the Bidder, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.

6.6 The Bidder, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has

made, is committed to or intends to make to officials of the Buyer or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.

6.7 The Bidder shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Buyer as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Bidder also undertakes to exercise due and adequate care lest any such information is divulged.

6.8 The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

6.9 The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

7. Previous Transgression

7.1 The Bidder declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India, that could justify bidder's exclusion from the tender process.

7.2 If the Bidder makes incorrect statement on this subject, Bidder can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

8. Earnest Money/Security Deposit

8.1. Every bidder, while submitting commercial bid, shall deposit an amount* *(to be specified in the RFP)* _____ as Earnest Money/Security Deposit, with the buyer through any of the following instruments:-

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(i) Bank Draft or a Pay Order in favour of the PCDA, New Delhi,

(ii) A confirmed guarantee by an Indian Nationalized Bank, promising payment of the guaranteed sum to the Ministry of Defence, Government of India, represented on behalf of the President of India, on demand within three working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by the Buyer shall be treated as conclusive proof for payment.

(iii) Any other mode or through any other instrument *(to be specified in the RFP)*.

* At present, the amount of EMD/SD is Rs. 1 crore in cases where the cost as estimated by the Buyer is above Rs. 100 crore and up to Rs. 300 crore and Rs. 3 crore if above Rs. 300 crore.

8.2. The Earnest Money/Security Deposit shall be valid up to a period of five years or the complete conclusion of contractual obligations to complete satisfaction of both the bidder and the buyer, whichever is later. In case there are more than one bidder, the Earnest Money/Security Deposit shall be refunded by the buyer to those bidder(s) whose bid(s) does/do not qualify for negotiation by the Commercial Negotiation Committee (CNC), as constituted by the Buyer, immediately after a recommendation is made by the CNC on the bid(s) after an

evaluation.

8.3 In the case of successful bidder a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of this pact.

8.4 The provisions regarding Sanctions for Violation in Integrity Pact include forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of Integrity Pact.

8.5 No interest shall be payable by the Buyer to the Bidder(s) on Earnest Money/Security Deposit for the period of its currency.

9. Company Code of Conduct

9.1 Bidders are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behavior) and a compliance program for the implementation of the code of conduct throughout the company.

10. Sanctions for Violation

10.1 Any breach of the aforesaid provisions by the Bidder or any one employed by him or acting on his behalf (whether with or without the knowledge of the Bidder) or the commission of any offence by the Bidder or any one

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employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act enacted for the prevention of corruption shall entitle the Buyer to take all or any one of the following actions, wherever required:-

(i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue.

(ii) The Earnest Money/Security Deposit/Performance Bond shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer shall not be required to assign any reason therefore.

(iii) To immediately cancel the contract, if already signed, without giving any compensation to the Bidder.

(iv) To recover all sums already paid by the Buyer, and in case of an Indian Bidder with interest thereon at 2% higher than the prevailing Prime Lending Rate, while in case of a Bidder from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the Bidder from the Buyer in connection with any other contract for any other defence stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.

(v) To encash the advance bank guarantee and performance bond/warranty bond, if furnished by the Bidder, in order to recover the payments, already made by the Buyer, along with interest.

(vi) To cancel all or any other Contracts with the Bidder.

(vii) To debar the Bidder from entering into any bid from the Government of India for a minimum period of five years, which may be

further extended at the discretion of the Buyer.

(viii) To recover all sums paid in violation of this Pact by Bidder(s) to any middleman or agent or broker with a view to securing the contract.

(ix) If the Bidder or any employee of the Bidder or any person acting on behalf of the Bidder, either directly or indirectly, is closely related to any of the officers of the Buyer, or alternatively, if any close relative of an officer of the Buyer has financial interest/stake in the Bidder's firm, the same shall be disclosed by the Bidder at the time of filing of tender. Any failure to disclose the interest involved shall entitle the Buyer to rescind the contract without payment of any compensation to the Bidder.

The term 'close relative' for this purpose would mean spouse whether residing with the Government servant or not, but not include a spouse separated from the Government servant by a decree or order of a competent court; son or daughter or step son or step daughter and wholly
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dependent upon Government servant, but does not include a child or step child who is no longer in any way dependent upon the Government servant or of whose custody the Government servant has been deprived of by or under any law; any other person related, whether by blood or marriage, to the Government servant or to the Government servant's wife or husband and wholly dependant upon Government servant.

(x) The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Buyer, and if he does so, the Buyer shall be entitled forthwith to rescind the contract and all other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Buyer resulting from such rescission and the Buyer shall be entitled to deduct the amount so payable from the money(s) due to the Bidder.

(xi) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the Buyer with the Bidder, the same shall not be opened.

10.2 The decision of the Buyer to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder shall be final and binding on the Bidder, however, the Bidder can approach the monitor(s) appointed for the purposes of this Pact.

11. Fall Clause

11.1 The Bidder undertakes that he has not supplied/is not supplying the similar systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India and if it is found at any stage that the similar system or sub-system was supplied by the Bidder to any other Ministry/Department of the Government of India at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the Bidder to the Buyer, if the contract has already been concluded.

11.2 The Bidder shall strive to accord the most favoured customer treatment to the Buyer in respect of all matters pertaining to the present case.

12. Independent Monitors

12.1 The Buyer will appoint Independent Monitors for this Pact, in consultation with the Central Vigilance Commission.

12.2 As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Head of the Acquisition Wing of the Ministry of Defence, Government of India.

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13. Examination of Books of Accounts

In case of any allegation of violation of any provisions of this Integrity Pact or payment of commission, the Buyer or its agencies shall be entitled to examine the Books of Accounts of the Bidder and the Bidder shall provide necessary information of the relevant financial documents in English and shall extend all possible help for the purpose of such examination.

14. Law and Place of Jurisdiction

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Buyer i.e. New Delhi.

15. Other Legal Actions

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

16. Validity

16.1 The validity of this Integrity Pact shall be from date of its signing and extend up to 5 years or the complete execution of the contract to the satisfaction of both the Buyer and the Bidder/Seller, whichever is later.

16.2 Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

17. The Parties hereby sign this Integrity Pact at _____ on _____.

BUYER BIDDER

JS&AM (LS/Air/MS), CHIEF EXECUTIVE OFFICER

MINISTRY OF DEFENCE,

GOVERNMENT OF INDIA

Witness Witness

1. _____ 1. _____
2. _____ 2. _____

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