

तार : 'फूडकॉर्प'  
Gram : 'FOODCORP'  
फैक्स नं. : एचएफसीआई एनडी  
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भारतीय  
खाद्य  
निगम



FOOD  
CORPORATION  
OF INDIA

मुख्यालय  
नई दिल्ली  
Head Quarters  
New Delhi

१६-२०, बाराखम्बा लेन, नई दिल्ली-११०००१, दूरभाष-२३४१३८७१-२३४१४८७२-२३४१४८८०  
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**NO.VIG.2(3)/2010-Pt.**

**DATED:- 25th JUNE, 2010**

**CIRCULAR NO.85/2010**

**SUBJECT:- TENDERING PROCESS – NEGOTIATION WITH L-1**

Reference is invited to Circular No.84/2010 and CVC guidelines dated 3<sup>rd</sup> March, 2007 (copy enclosed as Annexure-1). Certain issues relating to operationalisation of these instructions have been raised. Essentially, it has been felt that a Clause in the NIT, of the nature stipulated by Circular No.84/2010, would close the door for negotiations, even if an exceptional circumstance arises after opening of the tender. In such cases, it is felt that the only option left would be to either scrap the whole tender, or to award it without considering the said exceptional circumstance. The issue has been examined in depth and the following guidelines are laid down:-

- (i) The general principle that is to be adopted in all matters pertaining to tenders, including on the specific issue of whether negotiations will be permitted or not, is to finalise all the terms and conditions well in advance of the publication of the NIT. This principle requires that once the NIT is published, and the tender process has been set in motion, there should be **NO occasion** thereafter for any modifications in the basic rules and frame work governing the tender process. This requires that all aspects of a proposed tender should be thoroughly examined and considered well in advance of the publication of the NIT. If, nevertheless, there arises any circumstance that necessitates any changes in the tender frame work, this should lead invariably to the scrapping of the tender and restarting of the process once again.
- (ii) Keeping the above principle in view, it is clear that the decision to permit negotiations, or not to allow negotiations, has to be taken before the NIT is published. This decision cannot be taken at any point of time thereafter.

- (iii) The normal, or default, condition should be that negotiations will not be permitted. This is in line with the letter and spirit of the CVC's guidelines which states that negotiations will be allowed only in exceptional circumstances. Consequently, all NITs, tenders and bid documents should contain a statement as follows:-

"No negotiations will be conducted with any of the bidders who participate in this tender."

- (iv). If it is felt, prior to the issue of NIT, that the case is one that is covered by any of the exceptional circumstances of the kind enumerated in the CVC's guidelines, and that it would be essential and in the interests of the Corporation to keep open the option of entering into negotiations with L-1, the Authority competent to finalise the tender would have to submit a proposal with full justification in this regard to the next higher authority. Such higher authority would have to record on file the reasons why the Clause prohibiting negotiations with L-1 need not be inserted in the NIT and the bid documents in such a case. While doing so, the said authority will also lay down the frame work and conditions subject to which the negotiations would have to be carried out. Such frame work and conditions would be based on, and similar to, the conditions relating to ascertaining the reasonableness of the lowest quoted rate, in the manner outlined in the draft Purchase Manual (Annexure -2).
- (v) Separately ,instructions are being issued to amend para 25.23 of the Storage and Contract Manual to provide that tenders should be invited at least 6 months prior to the expiry of the current contract, as against 4 months as at present. All authorities are directed, therefore, to take action immediately to invite tenders at least 6 months before the expiry of ongoing contracts, without waiting for the formal amendment to the Storage and Contract Manual to be issued.

All are requested to ensure meticulous/strict compliance.  
This issues with the approval of C&MD.

[ DEV RAJ ]  
GENERAL MANAGER(VIG.)

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4. All officers working in Vigilance Division, Hqrs., New Delhi.

5. All GMs. FCI, Headquarters, New Delhi.
6. Coordination Desk, Vigilance Division, FCI, Hqrs., New Delhi.

Annexure-I

No.Vig.2(3)/2010-Pt.

Date: 05.05.2010

**CIRCULAR NO. 84/2010**

Reference is invited to Circular No.76/2010 (copy enclosed for easy reference). The issue was further deliberated in monthly performance review Meeting held in FCI, Hqrs. on 31.3.2010. Guidelines of CVC dated 3.3.2007 are again enclosed for ready reference.

It is again reiterated that as per CVC guidelines, there should be no post tender negotiation with L-1 except in certain exceptional situation, as post tender negotiations could often be a source of corruption. Such exceptional situations would include, procurement of proprietary items, items with limited sources of supply and items where there is suspicion of a cartel formation. The justification and details of such negotiations should be duly recorded and documented without any loss of time.

The NITs issued should invariably include the clause of non negotiation as above.

Therefore, it is of the utmost importance to start the process of positioning contractor(s) well in advance so that in the event of scrapping of tender enquiry on account of high/un-reasonable rates, another attempt could be made for positioning the contractor well before the expiry of the term of the existing contractor/(s).

All are requested to ensure meticulous/strict compliance.

This issues with the approval of C&MD.

**( R.P. SINGH )**  
**GENERAL MANAGER(VIG.)**

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Coordination Desk, Vigilance Division, FCI, Hqrs., New Delhi

No.Vig.2(3)/2010

Dated: March 19, 2010

**(CIRCULAR NO.76/2010)**

**Sub: Tendering process – negotiation with L-1.**

Reference is invited to the Central Vigilance Commission's circular No.4/3/07 dated 3<sup>rd</sup> March, 2007 on the subject cited above and circular No.1/1/10 dated 20<sup>th</sup> January, 2010. Copies of both the above circulars are enclosed for easy reference.

It is found that there have been negotiations with L-1 invariably in all tenders. This is violation of CVC instructions.

The CVC instructions dated 3.3.07 and 20.1.2010 referred to above are to be complied with strictly. Further, all concerned are requested to keep themselves abreast with latest circular updated from time to time by CVC and displayed at CVC web site [www.cvc.nic.in](http://www.cvc.nic.in).

Instructions have also been issued separately regarding providing adequate publicity to all tender notices, including posting the same compulsorily in all cases on the website. Downloadable tender forms with the facility to pay the cost of the tender form at the time of bid submission are also to be compulsorily adhered to. It is noticed that non compliance with these instructions often leads to limited or no competition at all. Such situations should be prevented at all costs. In case adequate competition has not been generated in respect of any tender enquiry and/or the rates are found to be high and unjustified, tender enquiry should be scrapped and fresh bids invited.

This is issued with the approval of ED(Vig.)/CVO.

**Encl: As above.**

**( DEV RAJ )  
GENERAL MANAGER(VIG.)**

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4. All EDs in FCI, Hqrs.
5. Co-ordination desk.

Telegraphic Address :  
"SATARKTA: New Delhi

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सं. / No. 005/CRD/012

भारत सरकार  
केन्द्रीय सतर्कता आयोग  
GOVERNMENT OF INDIA  
CENTRAL VIGILANCE COMMISSION

सतर्कता भवन, जी.पी.ओ. कॉम्प्लेक्स,  
ब्लॉक-ए, आई.एन.ए., नई दिल्ली-110023  
Satarkta Bhawan, G.P.O. Complex,  
Block A, INA, New Delhi 110023

दिनांक / Dated .....  
20<sup>th</sup> January, 2010

- (i) The Secretaries of all Ministries/Departments of Government of India
- (ii) The Chief Secretaries to All Union Territories
- (iii) The Comptroller & Auditor General of India
- (iv) The Chairman, Union Public Service Commission
- (v) The Chief Executives of all PSEs/Public Sector Banks/Insurance Companies/Autonomous Organisations/Societies.
- (vi) The Chief Vigilance Officers in the Ministries/Departments/PSEs/Public Sector Banks/Insurance Companies/Autonomous Organisations/Societies
- (vii) President's, Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat/PMO

CIRCULAR No.01/01/10

Attention is invited to the Commission's circular No. 4/3/07 dated 3.3.07 on the issue of "Tendering Process – Negotiations with L1".

In the said circular it has, among other things, been stated "As post tender negotiations could often be a source of corruption, it is directed that there should be no post tender negotiations with L1, except in certain exceptional situations". It has come to Commission's notice that this has been interpreted to mean that there is a ban on post tender negotiations with L-1 only and there could be post tender negotiations with other than L1 i.e. L2, L3 etc. This is not correct.

It is clarified to all concerned that - there should normally be no post tender negotiations. If at all negotiations are warranted under exceptional circumstances, then it can be with L1 (Lowest tenderer) only if the tender pertains to the award of work/supply orders etc. where the Government or the Government company has to make payment. However, if the tender is for sale of material by the Government or the Govt. company, the post tender negotiations are not to be held except with H1 (i.e. Highest tenderer) if required.

2. All other instructions as contained in the circular of 3.3.2007 remain unchanged.

3. These instructions issue with the approval of the Commission and may please be noted for immediate compliance.

  
(V. Ramachandran)  
Chief Technical Examiner

**No.005/CRD/012**  
**Government of India**  
**Central Vigilance Commission**

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Satarkta Bhawan Block 'A',  
GPO Complex, INA,  
New Delhi- 110 023  
Dated the 3rd March, 2007

**Circular No. 4/3/07**

**Sub:- Tendering process - negotiations with L-1.**

Reference is invited to the Commission's circulars of even number, dated 25.10.2005 and 3.10.2006, on the above cited subject. In supersession of the instructions contained therein, the following consolidated instructions are issued with immediate effect:-

(i) As post tender negotiations could often be a source of corruption, it is directed that there should be no post-tender negotiations with L-1, except in certain exceptional situations. Such exceptional situations would include, procurement of proprietary items, items with limited sources of supply and items where there is suspicion of a cartel formation. The justification and details of such negotiations should be duly recorded and documented without any loss of time.

(ii) In cases where a decision is taken to go for re-tendering due to the unreasonableness of the quoted rates, but the requirements are urgent and a re-tender for the entire requirement would delay the availability of the item, thus jeopardizing the essential operations, maintenance and safety, negotiations would be permitted with L-1 bidder(s) for the supply of a bare minimum quantity. The balance quantity should, however, be procured expeditiously through a re-tender, following the normal tendering process.

(iii) Negotiations should not be allowed to be misused as a tool for bargaining with L-1 with dubious intentions or lead to delays in decision-making. Convincing reasons must be recorded by the authority recommending negotiations. Competent authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated so that the time taken for according requisite approvals for the entire process of award of tenders does not exceed one month from the date of submission of recommendations. In cases where the proposal is to be approved at higher levels, a maximum of 15 days should be assigned for clearance at each level. In no case should the overall timeframe exceed the validity period of the tender and it should be ensured that tenders are invariably finalised within their validity period.

(iv) As regards the splitting of quantities, some organisations have expressed apprehension that pre-disclosing the distribution of quantities in the bid document may not be feasible, as the capacity of the L-1 firm may not be known in advance. It may be stated that if, after due processing, it is discovered that the quantity to be ordered is

far more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among the other bidders in a manner that is fair, transparent and equitable. It is essentially in cases where the organisations decide in advance to have more than one source of supply (due to critical or vital nature of the item) that the Commission insists on pre-disclosing the ratio of splitting the supply in the tender itself. This must be followed scrupulously.

(v) Counter-offers to L-1, in order to arrive at an acceptable price, shall amount to negotiations. However, any counter-offer thereafter to L-2, L-3, etc., (at the rates accepted by L-1) in case of splitting of quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation.

2. It is reiterated that in case L-1 backs-out, there should be a re-tender.

3. These instructions issue with the approval of the Commission and may please be noted for immediate compliance.

(Vineet Mathur)  
Deputy Secretary

**All Chief Vigilance Officers**

#### **4.12 REASONABLENESS OF PRICE**

Before placing the contract on the lowest evaluated responsive tender (L 1), the purchase organization is to ensure that the price to be paid is reasonable. Reasonableness of the price shall be assessed in a realistic and objective manner.

The broad guidelines for judging the reasonableness of price are as under:

- a. Last purchase price of same (or, in its absence, similar) goods.
- b. Current market price of same (or, in its absence, similar) goods.
- c. Current market price of major raw materials, which go into the production of the goods.
- d. Prices at which similar contracts are being operated in similar organizations i.e. CWC, State agencies etc.
- e. Quantity involved.
- f. Terms of delivery.
- g. Period of delivery.
- h. Cost analysis and changes in price index.

Price paid in an emergency purchase or purchase price of goods offered by a firm through 'distress sale' (i.e. when the firm clears its excess stock at throw away prices to avoid further inventory carrying cost etc) and purchases made at high rates under emergency situations to meet immediate requirement are not accurate guidelines for future use.